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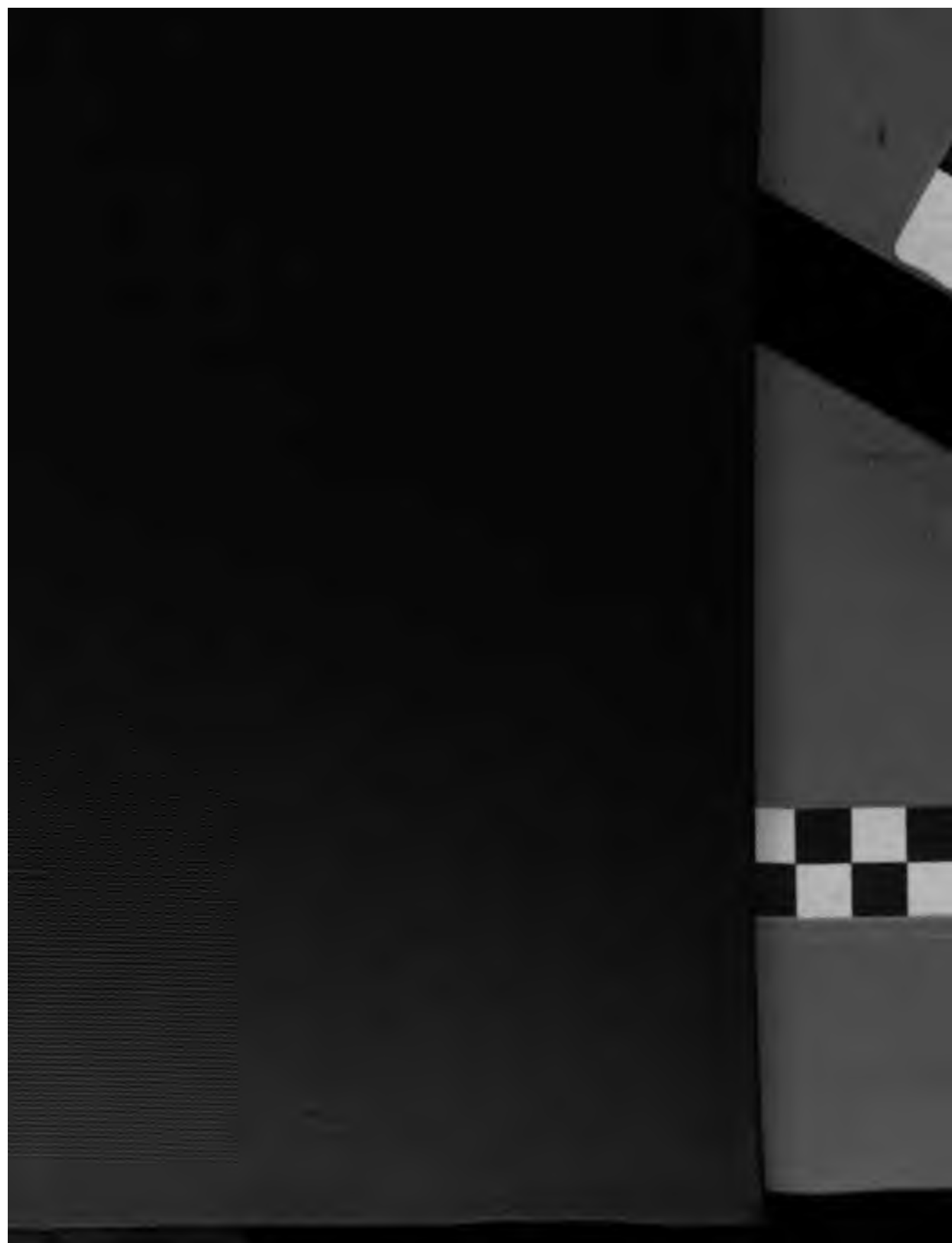
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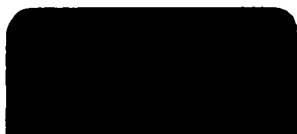
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**AMERICAN  
MARRIAGE LAWS  
IN THEIR SOCIAL ASPECTS**



**RUSSELL SAGE FOUNDATION  
NEW YORK - - - 1919**



AMERICAN  
MARRIAGE LAWS  
IN THEIR SOCIAL ASPECTS

*A DIGEST*

*By*  
FRED S. HALL AND ELISABETH W. BROOKE



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## PREFACE

SOMEONE has remarked that the whole of social reform is implied in social case work—if it be thorough enough. This is an overstatement; social reform has many approaches, and we could ill afford to dispense with a single one of them. It does happen, however, that the plan of study to which the present Digest is merely preliminary grew out of social case work in one of the large family agencies of New York, and that this brief study illustrates, in a fashion, the relation between the social worker's attempt to find a way out for a few people in grievous trouble and human issues of wider significance.

I have served for several years on the committee of a society for family social work to which have been referred its especially puzzling problems of individual welfare. In about three-fifths of all the cases so referred, the committee found that the core of the difficulty centered around marital maladjustments. (Their proportion in the whole work of the society, it should be added, would not be nearly so large.) These troubles of the Smiths, the Browns, and the Robinsons brought more forcibly to our attention than ever before certain ancient evils and certain proposed remedies. As a part of the general public, we had already noted the alarming increase in the number of divorces, but we had never fully realized before the close relation between divorce and our ill-devised, variously-administered marriage laws. We began to wonder why so much attention had been given to the defects of our divorce laws and so little to those regulating marriage. Of course, law is only a small part of the problem as compared with public education and early training, yet it shapes our social ideals, in part at least, besides having much to do with the practical adjustments of daily living.

To those who champion one wholesale remedy for marital unhappiness, the plans growing out of this committee work—plans for a series of brief studies to be made by the Russell Sage Foundation—will seem futile. To those, on the other hand, who believe in beginning where we are and in securing each advance step as we

## PREFACE

take it, statements that present the facts about the present laws, about their administration, and about the effect of both as observed in the lives of real people, will serve a useful purpose.

The first fruits of our endeavors will be found in a small book appearing simultaneously with this Digest—a study by Miss Colcord of Broken Homes and the social treatment of family desertion.<sup>1</sup>

Mr. Hall and Miss Brooke have compiled the present summary of our marriage laws and of certain proposals made by others for their reform as preliminary merely to an inquiry into the way in which the laws on our statute books are actually administered. Their administration has even more to do with family welfare, of course, than have the laws themselves. This first part of the larger study is put out promptly, however, because it will be of immediate service to the many who are now at last becoming interested in marriage law reform.

Leagues of women voters are interested in bringing reason and essential justice into this much neglected field; so are the officers of domestic relations courts, the more socially minded members of the bar, the social agencies of the country, and the churches. All will be eager, therefore, to measure, with the aid of these pages, the width of the gap between the proposals for reform made by leading authorities and the actual laws of the various states as here summarized. And no one can note, in each state, the distance thus shown to exist between the possible and the actual, I believe, without becoming more interested in the subject.

Then, if readers will accept a further suggestion, their examination of the provisions in their own state could be followed by some inquiry into the way in which the statutes regulating marriage are enforced there. What, in detail, is the interpretation put upon the marriage laws in daily practice? How are licenses issued? How carefully is the intention of the law made clear to unsophisticated people? How are evasions punished? The authors of these pages would welcome any light upon these topics, which will constitute their next subject of study.

MARY E. RICHMOND.

New York, May, 1919.

<sup>1</sup> Colcord, Joanna C.: *Broken Homes, a Study of Family Desertion and Its Social Treatment*. New York, Russell Sage Foundation, 1919.



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## SOME PROPOSALS FOR MARRIAGE LAW REFORM

**I**N PLANNING this brief study, its authors originally proposed to print their digest of existing marriage laws—or of things as they are—at the beginning. But they soon realized that most people would be more interested in things as they ought to be, and would prefer to examine first of all the proposals for reform of students who had given this subject of our American marriage laws detailed attention. Most readers will wish to know, of course, how the laws of their several states compare with those of other states, but they will be especially eager to discover the extent to which their state laws fall below the standards advocated by competent authorities. To facilitate this comparison a summary of the recommendations of certain of these authorities is presented in the following pages.<sup>1</sup>

The first reaction of those who begin to think about that tangle of conflicting and obscure enactments which now make up the marriage laws of this country is to decide that there should be one law for the whole United States, preferably a federal law, or failing that an identical law for every state. The motives, most of them unconscious, behind this desire for uniformity are somewhat mixed. Those who favor a federal law do so chiefly because they believe that only through such a means can at all satisfactory standards be everywhere applied; at least that their application by the route of state legislation would be a slow and wearisome process. A federal law is the royal road to their goal. Those on the other hand who think in terms of uniform state laws are controlled by a feeling that uniformity for its own sake, in this matter, is a great social gain.

All critics agree that we need far greater uniformity than we now have, but many doubt whether a uniformly good result would be

<sup>1</sup> Miss Richmond has explained in the Preface that this is only a preliminary study, to be followed by other books or pamphlets, describing the ways in which existing laws are administered, and the effects of their administration as traced in the case records of family social agencies, probation departments, and so on.

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*obtained* if a single law were imposed on all states by vote of Congress, without the adaptations that make enforcement easier in the different sections of the country, or whether this could be achieved even if such a law were enacted everywhere by state legislatures. The history behind the obligatory religious ceremony in Maryland, which is obligatory nowhere else, the ethnological differences between the Mexican girls of Texas, the Italians of our large cities, and the natives of New England, as these differences may affect the fixing of the "marriageable age"; the town unit for local marriage license administration in New England in contrast to the county unit usually found elsewhere—these and many other factors have to be reckoned with. In the words of ex-Justice Charles Evans Hughes, there has to be a "statesmanlike appreciation of past, present and future" in pushing for legislative reforms, especially for reforms that touch social institutions older than recorded history itself. "If there were centered in Washington," continues Mr. Hughes, "a single source of authority from which proceeded all the governmental forces of the country—created and subject to change at its will—upon whose permission all legislative and administrative action depended throughout the length and breadth of the land, I think we should swiftly demand and set up a different system. If we did not have states we should speedily have to create them. We now have them, with the advantages of historic background, and in meeting the serious questions of local administration we at least have the advantage of ineradicable sentiment and cherished traditions."<sup>1</sup>

A similar conviction had already been expressed by Woodrow Wilson, who says in his Constitutional Government: "The remedy for ill considered legislation by the states, the remedy alike for neglect and mistake on the part of their several governments, lies not outside the states, but within them. The mistakes which they themselves correct will sink deeper into the consciousness of their people than the mistakes which Congress may rush in to correct for them, thrusting upon them what they have not learned to desire. They will either themselves learn their mistakes, by such intimate and domestic processes as will penetrate very deep and abide with

<sup>1</sup> Hughes, Charles Evans: Presidential Address before the Bar Association of New York State, Jan. 14, 1916.

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them in convincing force, or else they will prove that what might have been a mistake for other states or regions of the country was no mistake for them, and the country will have been saved its wholesome variety."<sup>1</sup>

The arguments of both men are directed primarily against an unwonted extension of federal action. As to state action it is safe to assume that ordinarily no greater uniformity will be obtained than is adapted to local conditions. Legislatures will attend to that. Nevertheless those who offer recommendations for uniform state laws will do well to bear in mind that there are limits beyond which many feel that uniformity is not necessary and may be unwise. Certain recognized essentials should of course be uniform; but it is also very desirable, in a field left so largely heretofore to haphazard development, that opportunity be given for intelligent experimentation.

In so far as the desire for uniformity springs from more than an unthinking worship of it as a fetish, it is based on a fear that without uniform laws on marriage those who live in states with high standards will suffer through the ease with which their laws may be nullified so long as trips for the purpose of marriage may be made to a neighboring state where standards are lower. There is a quite general feeling that states are helpless to protect themselves from such attacks upon their standards. For those who share this feeling special attention is called to page 47, on which are listed the nine states which have apparently found a way, through special laws, to avoid this danger. These laws, more fully discussed at the point referred to, provide in effect that residents of a state cannot evade its laws if they go elsewhere to be married and then return to their home state. How thoroughly such provisions have accomplished their purpose can of course be shown only through a careful study of local administration. Even if they were completely successful there would still be the possibility that a high standard state might suffer from the lower standards of its neighbors,<sup>2</sup> but

<sup>1</sup> Wilson, Woodrow: *Constitutional Government in the United States*, p. 187. The Columbia University Press, 1908.

<sup>2</sup> For a discussion of this possibility—the coming into a state to live of bona fide residents of a lower standard state—see page 21, following, and page 46 in Part II, *The Marriage Laws by Topics*.

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the champions of a reasonable diversity contend that this danger is slight in comparison with the gains which come from the fact that through diversity in our laws the value or worthlessness of new provisions in the more progressive states is being demonstrated, while people in the other states wait and watch. Uniformity demands that all shall wait until all can agree on the next forward step. Those who see value in diversity are willing enough to agree that the line of progress is toward uniformity, and that this may possibly lead to a federal law later on; but they contend that more rapid progress can be made at present by means of state action, and that each step thus taken can be tested before it is generally adopted.

The proposals of the moderate progressives, looking to a rationalization of our marriage laws, are here given under the following seven heads:

1. Common law marriages
2. The marriageable age
3. Notice of intention to marry
4. The marriage celebrant
5. State registration of marriages
6. Inter-state relations
7. Summary of the Commissioners' Acts.

The four authorities selected for this summary are the Commissioners on Uniform State Laws (referred to throughout as "the Commissioners"); George Elliott Howard, author of *A History of Matrimonial Institutions*; Willystine Goodsell, author of *The Family as a Social and Educational Institution*; and Frank Gaylord Cook, whose series of articles, published in 1888, are still quoted as among the most original contributions to the subject of marriage law reform.<sup>1</sup>

The hotly debated proposals for marriage restriction in the interest of eugenics are not emphasized by any of these writers, nor are they included in this summary of recommendations. Their enactment in a few states<sup>2</sup> is too recent to justify inclusion in a list of

<sup>1</sup> These articles appeared in Vol. 61 of the *Atlantic Monthly* and are entitled respectively "The Marriage Celebration in Europe," p. 245, "The Marriage Celebration in the Colonies," p. 350, "The Marriage Celebration in the United States," p. 520, and "Reform in the Celebration of Marriage," p. 680.

<sup>2</sup> For a summary of these special provisions see page 39, (3h).

#### PROPOSED REFORMS SUMMARIZED

tested and tried next steps, but the new measures will receive especial attention in our proposed study of marriage law administration.

The opinions of two of our authorities regarding the general need for reform in American marriage laws<sup>1</sup> is expressed in the following quotations:

It may reasonably be doubted whether any people in occidental civilization has marriage laws so defective as ours. Almost every conceivable blunder has been committed.<sup>2</sup>

In no part of the whole range of human activity is there such imperative need of state interference and control as in the sphere of the matrimonial relations.<sup>3</sup>

"The law makes clear and full provision for contracts affecting the sale of houses and lands, horses and dogs, and goods and chattels of every description; and why marriage, the most important of all human contracts, should not be as anxiously defined and provided for, and thus placed beyond the reach of both fraud and doubt, appears to me to be one of the greatest anomalies in the law of a Christian country." These are the words of an eminent Scotch lawyer, with reference to the law of Scotland. They equally apply to the common law of the United States.<sup>4</sup>

A striking illustration of the general defect against which this complaint is lodged appears in a statement recently noted in the Montana Code of Laws to the effect that "the provisions of other portions of the Code in relation to contracts and the capacity of persons to enter into them have no application to the contract of marriage."

That two of our authorities do not regard the proposals here made as panaceas for all our matrimonial ills is apparent from the following paragraphs:

It should clearly be understood at the outset that the moderate progressives, in favoring reform of the domestic relations codes of the various nations are not unduly optimistic with regard to the happy results to be secured by such methods.

<sup>1</sup> It is interesting to note that the marriage laws in one of our dependencies, the Panama Canal Zone, reflecting as they do the laws of continental Europe, are nearer the standards recommended by our authorities in at least two particulars than are the laws of most of our states. Thus common law marriages are not recognized, and a 15 days' notice of intention to marry is required. In addition a solemnization must be before a civil official, his secretary, and two witnesses, the celebrant being obliged to inquire of the contracting parties whether they join in matrimony of their own free will, and to inform them of the nature of the contract and of the mutual duties they are to assume.

<sup>2</sup> Howard, George Elliott: "Social Control of the Domestic Relations," Papers and Proceedings, American Sociological Society, Vol. V, p. 222. The University of Chicago Press, 1911.

<sup>3</sup> Howard, George Elliott: A History of Matrimonial Institutions, Vol. III, p. 184. The University of Chicago Press, 1904.

<sup>4</sup> Cook, p. 245.

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Every thoughtful social observer must realize soon or late that good laws do not guarantee good societies, good homes or good characters. The most that enlightened legislation can accomplish is to furnish certain external conditions and influences favorable to wholesome social life in one or more of its multiform phases. Beyond this it can do little. But to secure wise and equitable conditions of life is one of the most essential functions of government.<sup>1</sup>

A wide field for beneficent legislation therefore remains; and although morality "can not be legislated into a people," it is precisely by wise measures of this character that the lawmaker can render powerful aid in the creation of an environment favorable to moral and social progress.<sup>2</sup>

It is in the spirit expressed in the above paragraphs that the recommendations of these writers have been assembled and presented here in summary form.

### I. COMMON LAW MARRIAGES

All four authorities urge that common law or non-ceremonial marriages be explicitly declared null and void. Such marriages are still recognized in 26 states, and possibly are valid in six other states in which their exact status has not been clearly settled.<sup>3</sup> Since courts have frequently reversed themselves on the subject, it is urged that the status of such marriages be made sure by statutory enactment. For reference to the changes in the situation in the last 15 years due to the passage of new laws or to court decisions, see page 32.

Common law marriage as an American practice has its origin in the English common law, though it has been forbidden by English statute for over 150 years. What alliances of this sort are, or may be, has been expressed in many judicial opinions. Among them the following may be quoted:

It is sufficient if the acts and declarations of the parties, their reputation as married people, and the circumstances surrounding them in their daily lives, naturally lead to the conclusion that, although they began to live together as man and mistress, they finally agreed to live together as husband and wife. (*Gall v. Gall*, 114, N. Y. 109, 118; 21 N. E. 106, 109.)

These loose and irregular contracts, as a general thing, derive no support from morals or religion, but are most generally founded in a wanton and licentious cohabitation. Hence the law of the state has given them no sanction. (*Dennison v. Dennison*, 35 Maryland 380.)

<sup>1</sup> Goodsell, Willystine: *A History of the Family as a Social and Educational Institution*, p. 536 sq. New York, The Macmillan Co., 1915.

<sup>2</sup> Howard, *Matrimonial Institutions*, p. 203.

<sup>3</sup> For the list of states, see p. 31 (2).



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But another judicial decision in Maryland has given them sanction in practice by the use of a legal fiction which the lay mind finds it hard to fathom. In the decision referred to it is stated that "there cannot be a valid marriage without a religious ceremony; but marriage may be proved by general reputation, cohabitation and acknowledgment, and when these exist it will be inferred that a religious ceremony has taken place although evidence may not be obtained of the time, place and manner of the celebration."<sup>1</sup>

Regarding such marriages Howard writes that "practically all the hardship and social anarchy caused by the canon law at its wickedest survives in our common law marriage, . . . a custom which legalizes and virtually invites impulsive, impure and secret unions."<sup>2</sup>

Goodsell's position is stated with almost equal positiveness as follows:

Is it not an amazing fact that, in a matter which so profoundly affects the dignity and stability of the family institution, society should be so slow to take enlightened action? Surely no legislative reform is more needed than clear and positive statutes declaring such loosely contracted unions null and void.<sup>3</sup>

It is not merely the public which suffers through the system of common law marriages, for Cook points out that a marriage of this sort "fails to protect not only the contracting parties, but also the families to which they belong. Indeed to protect the latter it makes not the least attempt, and in this respect it is far behind the law of Western Europe."<sup>4</sup>

It is in his historical discussion of the subject that Cook is most illuminating. We quote him, therefore, at some length.

But our common law is a heritage from the past. . . . In the leading nations of Europe, the Roman law has been so modified by statute as to give a system of marriage celebration conducive to the protection of individuals and of the stability of society. In the United States, however, there has been not progress, but retrogression; and today our common law is looser than was the law even in later Rome.<sup>5</sup>

Ours is the Roman law of Justinian minus the element of parental consent. In Rome, the bridegroom went openly in the daytime to the house of the bride's father, and with his consent led her away to his own home. In most of the United States, he may go by stealth at night, and carry her off without the knowledge or consent of her parents. If, during the proceeding, the runaways seriously

<sup>1</sup> Richardson v. Smith, 80 Maryland 89.

<sup>2</sup> Howard: Proceedings, op. cit., p. 222.

<sup>3</sup> Goodsell, The Family, etc., p. 537.      <sup>4</sup> Cook, p. 528.      <sup>5</sup> Cook, p. 245.

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and voluntarily agree *eo instanti* to be husband and wife, *ipso facto* they become such in law.<sup>1</sup>

The [American] colonists . . . built up for themselves, by custom and by statute, a system adapted to the various phases of society and of religion that existed among them . . . The one thing everywhere, without which the marriage tie could not be constituted was a solemnization in the presence of an authorized third person. . . . The colonial system of celebration was continued in the States, and for many years, under the Constitution, remained essentially unchanged. . . . But in the early part of this century there arose in the country a discussion regarding the nature of our common law, and the relation of that law to our statute law in governing the celebration of marriage—a discussion which since then has constantly increased, and has gradually brought about a revolution unparalleled in the history of our subject. . . . It has destroyed the colonial system, and has introduced into our law much of the insecurity, the irreverence, the license, of the Middle Ages. Our common law today is the canon law that existed prior to the Council of Trent.<sup>2</sup>

It appears that in the course of the discussion referred to most states followed the lead of Chancellor Kent of New York state in upholding common law marriages, while a sturdy group of dissenting states accepted instead the Massachusetts doctrine that such marriages never have had any sanction in this country.

More fully than our other authorities, Cook expresses the fundamental principles of good law that are violated in the recognition of common law marriages. He writes as follows:

It is certainty and simplicity, then, at which first of all the states should aim in dealing with this subject. In the words of Mr. Boyd Kinnear, an eminent English barrister, the law of the marriage celebration should "embrace the maximum of simplicity and the maximum of certainty: of simplicity, because it affects every class, and almost every person, the most humble and illiterate as well as the most exalted or learned, and because it has to be known and acted on in the absence not only of legal advice, but often in the absence of even ordinary common-sense counsel; of certainty, because it affects a contract and social relation the most important that can arise between human beings—because it affects the foundation of society itself, and influences the fate, it may be the eternal fate, of innumerable individuals" . . . Our predominant common law . . . does contain the element of simplicity. . . . At the same time, what form [of marriage] is more repugnant to the certainty of the fact of the parties' consent, and hence is more objectionable for the practice of a civilized community? In short, certainty is not to be obtained without publicity, and hence the common law must be repealed. The primary principle of the colonial system must be enacted; that is to say, the interposition of a third person, duly authorized, must be made indispensable to constitute matrimony.<sup>3</sup>

The Commissioners give no reasons for their recommendation in regard to common law marriages. They simply prescribe in Section XXIII of the act they recommended in 1911 for adoption in all

<sup>1</sup> Cook, p. 527.

<sup>2</sup> Cook, p. 520 sq.

<sup>3</sup> Cook, pp. 681 and 682.

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the states<sup>1</sup> that "all marriages hereafter contracted" in any other than the prescribed ceremonial manner or without the issuance of a license "shall be null and void." The ceremony was clearly regarded as the more important part, for the Commissioners provide an exception regarding the latter which recognizes the validity of an unlicensed marriage, under specified conditions, if it has been duly solemnized.<sup>2</sup>

"Common law marriage is now supported," Howard writes, "on two principal grounds. The innocent offspring, we are told, ought not to suffer because the parents have neglected the formalities prescribed by a mere statute.<sup>3</sup> Moreover, to declare an irregular, perhaps a clandestine, union void is to invade the most sacred right of the individual."

## II. THE MARRIAGEABLE AGE

As to "marriageable age"—the age below which persons may not marry<sup>4</sup>—the authorities differ, Howard recommending the age of majority, and the Commissioners' Act leaving the age to be fixed by law in each state.<sup>5</sup> In 17 states no marriageable ages have been fixed by law and presumably the common law ages are in force—14 for males and 12 for females. The usual statutory ages are 18 for males and 16 for females.

Howard says: "The age below which marriage may not be con-

<sup>1</sup> An Act relating to and regulating Marriage and Marriage Licenses approved by Conference of Commissioners on Uniform State Laws and recommended for adoption in all the states, August, 1911. This act is known as the "Marriage License Act." The office of the Commissioners is at Columbia, Mo.; Manley O. Hudson is Secretary.

<sup>2</sup> For a fuller statement of this exception see page 22.

<sup>3</sup> Thus a correspondent in Oklahoma writes: "Our courts have gone the limit in upholding these irregular marriages. This is true, very largely, because of the fact that we have so many Indians here and many of them so ignorant of the law that a formal marriage is entered into by the more educated class of Indians but the full-bloods usually take up with each other and live as man and wife."

<sup>4</sup> For a fuller discussion of the term "marriageable age" and of the ages that have been established, see p. 32, (2). The importance of the question is indicated in a New Mexico decision which reads as follows:

"The marrying of a female under 15 belongs to the class of statutory misdemeanors where knowledge of the person's age and intent to marry when under age is not a necessary element of the offense. In a matter of such importance to the race the law imposes upon the officiating officer the duty of ascertaining at his peril the age of the persons marrying." (Territory v. Harwood, 15 N. Mex. 426.)

<sup>5</sup> Section V.

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tracted ought to be that of legal majority for both the man and woman. 'Majority' is the law's simple device for securing mental maturity in the graver affairs of life. Is not wedlock as serious a business as making a will or signing a deed? Immature marriages are a fruitful source of evil; why should the parent, often ignorant or selfish, have the power of legalizing them by his consent?"<sup>1</sup>

Cook and Goodsell have no recommendation on this point. There is no doubt that a minimum age should be fixed higher than those recognized in common law, but Howard's recommendation that this be the age of majority will hardly meet with general approval from social workers, for examples from their experience show how frequently it is necessary to treat different people in different ways. There are physiological differences due to racial or climatic influences to be considered, and also varying marital traditions in our diverse population which the state cannot sweep aside with impunity if its enactments are to accomplish more good than harm.

### III. NOTICE OF INTENTION TO MARRY

In the belief of all four authorities a barrier is needed against hasty marriages. Such a barrier exists by law in only eight states.<sup>2</sup> It takes the form of a provision that a period of time, usually five days, must elapse between the application for a marriage license and its granting. Regarding such a provision the authors whose views are summarized write as follows:

There is still graver fault in the license laws of nearly the whole country. Nowhere, except in Porto Rico, is there any adequate provision regarding notice or the filing and trial of objections to a proposed marriage. . . . All this is contrary to sound public policy. The notice of intention should be recorded for a reasonable period, say ten days, before issuance of the license; and during this term it should be officially posted, and also published in the newspapers—not merely concealed in the register or published at the discretion of the official, as is now the usual course. Objections might then be filed, and in case of need tried in a court clothed with proper jurisdiction, before the celebration were allowed to proceed. Under the existing state legislation it would be difficult, certainly awkward, to stop a proposed marriage on the ground of alleged legal impediments. To make an objection effective, it might be necessary either to "anticipate the notice" or to interrupt the nuptial ceremony.<sup>3</sup> [This possibility had been suggested by Cook.]

<sup>1</sup> Proceedings, p. 222.

<sup>2</sup> For a list of these states and a further discussion of the subject see p. 36, (3c).

<sup>3</sup> Howard: *Matrimonial Institutions*, pp. 191 and 192.

#### PROPOSED REFORMS SUMMARIZED

Such a delay, together with publication of the intention of the parties to marry, should be obligatory in every State in order that illegal marriages or those contrary to the best interests of the individuals or of society may be prevented.<sup>1</sup>

"It is the duty of the State," said the [British] Royal Commission, "to discourage and place obstacles in the way of sudden and clandestine marriages, both for the sake of inducing forethought and deliberation generally, in the formation of indissoluble relations, upon which the happiness, usefulness, and morality of life depend; and also for the special purposes" of preventing illegal and irregular relations, and "of enabling parents . . . to protect minors from improvident and unsuitable connections." . . . In France and in England . . . the provisions regarding these formalities are both definite and systematic. They are worthy of careful consideration in the amendment of our law. The application or notice must contain a full legal description of the parties and of their parents; and between its filing and the issuing of the certificate a certain time must elapse, during which the notice must be posted in a public place. Thus ample opportunity is given, in the initiatory steps of the proceeding, for public objections to its conclusion. If such objections are made, they must be heard by a competent court before the regular course is resumed. But in most of the United States, not only does the notice contain an insufficient description of the parties, but also the officer is allowed to issue his certificate directly upon the filing of the notice, thus excluding any public objection at the very time when it can be fully and fairly considered.<sup>2</sup>

The act which the Commissioners recommend<sup>3</sup> calls for a five-days' advance notice and for its publication. It also establishes a procedure for the filing and hearing of objections.

#### IV. THE MARRIAGE CELEBRANT

The recommendations of Howard and Cook center here around making the solemnization of marriage a more responsible and better safeguarded social function. Goodsell does not refer to this phase of the subject and the Commissioners' Act<sup>4</sup> leaves the naming of both civil and religious celebrants to the states.

Few people realize, probably, that in Pennsylvania and West Virginia anyone who chooses to do so may solemnize marriages. Custom prescribes certain religious and civil celebrants, but the law is silent on the subject. From this extreme of *laissez faire* the statutory provisions vary widely until the most explicit provisions are reached in the eight states that require all religious celebrants to be licensed and registered. In 1888 Cook called attention to the exceeding looseness of our laws on this point:

In the constitution of marriage, a clergyman acts under the authority and as the agent of the state. Is there any reason why he should not submit, like other

<sup>1</sup> Goodsell: The Family, etc., p. 538.

<sup>2</sup> Cook: p. 686 sq.

<sup>3</sup> Sections III and VI.

<sup>4</sup> Section I.

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civil officers, to close scrutiny and proper obligation? . . . By the Virginia act of 1780, "any ordained minister of the gospel" was authorized to solemnize marriage, provided he produced before the county court credentials of his ordination and of his good standing in his denomination, took the oath of allegiance to the Commonwealth, and gave bond with two or more sureties "for the true and lawful performance of his trust." . . . The principle, at least, is worthy of general acceptance.

The statutes are fully as lax with the civil officer as with the minister. . . . There remains the surprising and disgraceful fact that there are in the city of Boston alone over two thousand justices of the peace with absolutely no special qualifications and hardly any responsibility, but with full authority to represent society in the constitution of the most important civil relation, in which both the contracting parties and the State are supremely interested. . . .<sup>1</sup> A strict responsibility in the official celebrant, whether minister or civil officer, is hardly possible unless the exercise of his office is confined to reasonable territorial limits. . . . With these [specified] exceptions, as far as the law is concerned, a minister resident or settled in Maine may solemnize marriage in Texas—a degree of confidence reposed by the civil power in no other of its agents. Indeed, it would be difficult to find another instance of such complete renunciation, or rather neglect, of all control.<sup>2</sup>

Howard is in accord with these suggestions, as the following quotations show:

The qualified minister should be authorized to act only within the local district of his permanent residence, the limits thereof to be defined by statute . . . apparently in the great majority of states and territories, although the statutes are often far from clear, all qualified ministers, residing anywhere in the United States, may act. . . .

Another useful lesson may be learned from the early laws. Proofs of ordination by the filing of credentials were often demanded. . . . Rhode Island has thus a careful system of local registration; . . . but in the majority of cases no such precautions are specified in the statutes. Here is need of reform.

The laws regarding the civil ceremony are also seriously defective, if not in all respects equally lax. The magistrate in the exercise of his functions is not usually restricted to a local district sufficiently small to guarantee safe administration. . . . At present in twenty-two states and territories the justice of the peace, or the corresponding local officer, is confined to his own county or district. Elsewhere he may act anywhere within the commonwealth; . . .

Nor are the persons to whom is confided this important social trust possessed of the needful qualifications. They are not selected because of special fitness. . . . The duties of such a post are conferred, *ex officio*, in a haphazard fashion, upon a great variety of functionaries, who are either incompetent or else too busy with other matters to discharge them properly. As a rule, the justice of the peace is thus notoriously unfit; and there is something grotesque in giving authority to solemnize marriages to aldermen and police justices, as in New York;<sup>3</sup> to speakers of the house and senate, as in Tennessee; or to the county supervisors, as in Mississippi.<sup>4</sup>

<sup>1</sup> This is no longer true, for in Massachusetts at present the number of justices of the peace who may solemnize marriages in each locality is closely limited by law. But no such limitation exists in most states. For details, see p. 41, (4a).

<sup>2</sup> Cook: pp. 684-686.

<sup>3</sup> No longer true of aldermen.

<sup>4</sup> Howard, *Matrimonial Institutions*, p. 188 sq.

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### V. STATE REGISTRATION OF MARRIAGES

A compulsory system of state registration is recommended by all of our authorities.<sup>1</sup> In 20 states such registration is not required. It is hard to see why so important a reform has been delayed. One alleged explanation has come to us from a correspondent in an otherwise very progressive state who writes that attempts to pass a law of this sort have been unsuccessful, due largely to the opposition of an association of [license issuing] clerks who have opposed this measure because it would deprive them of certain registration fees.

It is only through compulsory state registration of marriages that reliable marriage statistics for a state can be compiled. Such registration, moreover, greatly facilitates the search for a marriage record when, for example, it is believed that a man or a woman has been married, but it is not known in which county or in which of several nearby states the ceremony may have taken place.

### VI. INTER-STATE RELATIONS

Only one of the authorities here quoted, the Commissioners, has a direct recommendation intended to prevent the evasion of a state's marriage laws through contracting marriage in another state. The act recommended by the Commissioners in 1912<sup>2</sup> has already been referred to. It contains but four sections, which are shown in full on page 25. They provide in brief that if residents of a state, who intend to remain so, contract a marriage elsewhere that is forbidden and void in their own state, such a marriage remains void in their state of residence in spite of its having been contracted elsewhere. This act has been adopted in Illinois, Louisiana, Massachusetts, Vermont, and Wisconsin.

Another form of protection from neighboring states with lower marriage law standards is the advance notice law already referred to on page 18. We are informed that the chief reason for the adoption of this law in the New England states was a desire to stop the con-

<sup>1</sup> Howard: *Matrimonial Institutions*, p. 193; Goodsell: p. 538 sq; Cook: p. 688; and the Commissioners' Act, Section XXVIII.

<sup>2</sup> An Act on the subject of marriages in another state or country in evasion or violation of the laws of the state of domicile; approved by the Conference of Commissioners on Uniform State Laws and recommended for adoption in all the states, August, 1912. This act is known as the "Marriage Evasions Act."

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tracting of marriages out of the state for the express purpose of evasion. As a result of efforts on the part of those interested, these six states, one after another, have adopted the same standard in this particular; non-residents must wait five days for their licenses.<sup>1</sup> It is reported that this law has greatly reduced the number of non-resident marriages in New England.

As this study goes to press word comes from a middle western state in which the repeal of the five-day law is being attempted. Prospective brides and grooms who are unwilling to wait the necessary five days are getting their licenses and having the ceremonies performed just across the state line, and the fees of license clerks in the home state are in jeopardy. If the New England solution of this difficulty; namely, getting the adjoining states to adopt the same five-day rule, has not been attempted in the western state referred to, it should be.

### VII. A SUMMARY OF THE COMMISSIONERS' ACTS

As the Marriage License Act recommended by the Commissioners in 1911 is at present out of print, we reproduce an outline of its chief provisions at this point. For convenience of reference, this outline follows the form established for each of the summaries by states shown in Part III. The Commissioners' Marriage Evasions Act recommended in 1912 is given in full under (7). Unless otherwise specified references are to the sections of the Marriage License Act.

#### 1. COMMON LAW MARRIAGES

Such marriages are void. All marriages, hereafter contracted, in violation of any of the requirements of Section I of the act, with certain exceptions for technical irregularities,<sup>2</sup> are null and void (xxiii). Section I provides that marriages may be validly contracted only if a license has been issued therefor, and if solemnized before a person authorized by the laws of the state to celebrate marriages, by the parties declaring in the presence of at least two competent witnesses that they take each other as husband and wife, or in accordance with the customs of any religious society, etc., to which either of the parties may belong, by these persons making the same declaration in the presence of at least two competent witnesses.

Under certain circumstances a marriage license is "deemed to have been issued." This is provided for as follows: "Where a marriage has been celebrated in one of the forms provided for in Section I of this act, and the parties thereto have immediately thereafter assumed the habit and repute of husband and wife, and have continued the same uninterruptedly thereafter for the period of one year,

<sup>1</sup> And in certain of these states residents also.

<sup>2</sup> Lack of authority alone, for example, on the part of the celebrant, or lack of parental consent, shall not invalidate the marriage if either of the parties fully believed that the two were married (xxiv and xxv).



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or until the death of either of them, it shall be deemed that a license has been issued as required by this act" (xxv). The parties to any such void marriage may at any time validate it by complying with the requirements of the act, and the issue of such a marriage, *if any, shall thereupon become legitimate* (xxiii).

### 2. MARRIAGEABLE AGE

Because a marriage without a license is void (xxiii), the age below which a license may not be granted—i. e., the "marriageable age of consent," to be fixed by each state—becomes the marriageable age (v).

### 3. THE MARRIAGE LICENSE

*a. Requirement.*—See 1 above.

*b. Where obtained.*—From an official (to be named in each state) of the place (town, county, etc.)<sup>1</sup> in which one of the parties resides; provided that if both parties are non-residents of the state, the license may be obtained from the specified official of the "place" where the marriage ceremony is to be performed (ii). But application for the license may be made either to the issuer in person or to any magistrate or justice of the peace in the "place" of residence of one party or the "place" of the contemplated marriage. He shall forward it to the issuer (iv).

*c. Advance notice, objections, etc.*—At least five days' notice of intention to marry is required, but in an emergency a probate judge may allow an earlier issuance (iii). The application is to be posted in the office of the issuer, and must show the names and residences of both parties and the date of application. Objections may be filed by any one under oath in a probate court, and the court may require the parties within 10 days to show cause why the license should not be refused. While the matter is pending no license may be issued. After a hearing the court may issue an order refusing the license, the costs to rest in its discretion. The costs fall on the objector if he is overruled by the court (vi).

*d. Parental consent.*—Required for all between the "marriageable age of consent" and the "age of legal majority," which is left to each state to establish.<sup>2</sup> The consent must be given under oath or certified under the hand of the parents and verified by an affidavit which is to be filed, and the fact of consent must be entered on the license docket (v). *Penalty.*—An issuer who violates this provision, or any persons who swear falsely in regard to the age of minors, or pretend to be their parents, are subject to a fine of from \$100 to \$500 or imprisonment not over one year, or both (vii).

*e. Form of license.*—The license is to be directed to any person authorized by law to solemnize marriages, authorizing him to do so within one year; or to parties who are to be married without a celebrant, authorizing them to marry within one year. In the latter case it is to include also the statement of the issuer of the license that he is satisfied that there is no legal impediment to the marriage according to the rules of the sect of at least one of the parties. The license must also show where the solemnization is allowed, as prescribed in 4d following, the age of any minor applicants and the fact that the parent has consented to the marriage; the facts as to prior marriages, if any, and their number and manner of dissolution. It must contain a statement that its issuance shall not remove any legal disability to marriage which may exist. Two forms of license are prescribed in full, one for solemnization before a celebrant and the other for solemnization without a celebrant (x, xi and xii).

*f. Record of license.*—A record shall be kept in a book to be supplied by the state. In this the issuer shall record all applications, all licenses issued and all matters

<sup>1</sup> Hereafter the word "place" is used in this connection with the meaning here shown.

<sup>2</sup> Special provision is made for issuing a license when there is no parent, guardian, etc., competent to act.

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he is required to ascertain. The book is open to public inspection (ix). *Penalty.*—For failure to enter the record of application and of the issuance of a marriage license immediately, or to keep the record open to public inspection, etc., the issuer is subject to a fine of \$50 (xx).

*g. Life of license.*—One year (x). *Penalty.*—A celebrant who solemnizes a marriage more than one year after the date of the issuance of the license is subject to a fine of from \$100 to \$500, or imprisonment for not over one year, or both (xvi). Either or both of the parties to a marriage without a celebrant are subject to a similar penalty (xvii).

*h. Other penalties and prohibitions.*—The issuance of a license is forbidden unless the parties have been identified, and unless both have filed statements under oath relative to the legality of the contemplated marriage and its date; the names of the parties, their relationship if any, ages, nationality, color, residence and occupation; the names of the parents if the parties are minors; the fact of previous marriages if any; and the manner of dissolution. The issuance of a license is forbidden if there is any legal objection to the marriage (iv), and also unless the issuer is satisfied that neither party, if a non-resident, is debarred by the laws of the state in which he is a resident (Evasions Act, Section 3). *Penalties.*—Any issuer who shall knowingly issue a marriage license contrary to or in violation of the provisions of the act is subject to a fine of from \$100 to \$500, or imprisonment not over one year, or both (viii). Applicants or other persons are subject to the same penalties, for wilful and false swearing in regard to the competency of applicants (vii). For issuing a license to a non-resident whose laws debar him from marriage, the issuer is subject to a penalty to be prescribed by each state (Evasions Act, Section 4).

### 4. SOLEMNIZATION

*a. The celebrant.*—Each state is to define both the civil and religious celebrants. Solemnization without a celebrant is allowed if one of the contracting parties belongs to a religious society, etc., in which this is customary (i). *Penalty.*—Any one not authorized to solemnize marriages who shall undertake to do so is subject to a fine of from \$100 to \$1,000, or imprisonment not over one year, or both (xviii).

*b. Presentation of license.*—Required. *Penalty.*—A celebrant is subject to a fine of from \$100 to \$500, or imprisonment for not over one year, or both, for solemnizing without a proper license presented by the parties (xvi).

*c. Form of ceremony.*—The parties must declare that they take each other as husband and wife, and at least two competent witnesses are required besides the officiate (i). *Penalty.*—A celebrant who solemnizes a marriage without requiring this declaration or without requiring the presence of the witnesses is subject to a fine of from \$100 to \$500, or imprisonment for not over one year, or both (xvi).

*d. Other requirements and prohibitions.*—The marriage may be solemnized in any "place" in the state except in the case where both parties are non-residents when it must be in the "place" in which the license was issued. The celebrant must satisfy himself that the persons presenting themselves are the parties named in the license (x). *Penalties.*—Any celebrant who shall falsely certify as to the date of a marriage,<sup>1</sup> or shall solemnize a marriage knowing that there are legal impediments,<sup>1</sup> or unless the consent of the parents of a minor is stated in the license or shall solemnize a marriage in a "place" other than that prescribed,<sup>1</sup> is subject to a fine of from \$100 to \$500, or imprisonment for not over one year, or both (xvi). A celebrant who shall solemnize the marriage of a non-resident debarred from marriage by his own state's laws is subject to a penalty to be fixed by each state (Evasions Act, Section 4). See also 3g above.

<sup>1</sup> The same penalty for this offense applies to either or both parties who solemnize marriage without a celebrant (xvii).

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### 5. THE MARRIAGE RECORD

*a. Certificates and their distribution.*—The marriage certificate must be furnished by the license issuer in triplicate and must be appended to the license. A separate form is provided for those who solemnize marriage without a celebrant. Each certificate must contain a signed statement by the celebrant to the fact, place and date of solemnization, the name and residence of each party, the date and number of the license, and the title and address of the officer who issued it. It shall also contain the signatures of the two witnesses to a statement that they heard the parties take each other for husband and wife. Those who solemnize marriage without a celebrant must state on the certificate the same facts except the residence of the parties, and in addition must state the name of the society, sect, etc., to which either party belongs, and the fact that the issuer had certified that he was satisfied that there was no legal impediment, and the certificate must contain the signature of two witnesses to the above named declaration. On the triplicate copy is to be a printed statement that it must be sent to the licenser within 30 days after the marriage (xiii).

The celebrant shall report the marriage by sending the triplicate copy of the certificate to the issuer of the license within 30 days after the marriage (or in the case of solemnization without a celebrant, the parties shall so report). The parties are to receive the original and duplicate copies of the certificate from the celebrant (xiv). *Penalty.*—For failure to transmit the triplicate certificate to the issuer within 30 days the celebrant (or either or both of the parties, where there is no celebrant) is subject to a fine of \$100 (xix).

*b. Local record.*—Required. It is to be made by the issuer of the license on the docket from the triplicate certificate, which is then to be filed (xv). *Penalty.*—For failure the issuer of the license is subject to a fine of \$50 (xx).

*c. State record.*—On February 1st of each year the issuer shall report to a state official (to be fixed by each state) giving a statement for the preceding calendar year of all licenses issued, including all facts required to be ascertained by him and all marriage certificates returned by him. *Penalty.*—For failure or refusal he is to forfeit \$100 (xxviii).

### 6. INTER-STATE RELATIONS<sup>1</sup>

SECTION 1. *Be it enacted, etc.,* That if any person residing and intending to continue to reside in this state who is disabled or prohibited from contracting marriage under the laws of this state shall go into another state or country and there contract a marriage prohibited and declared void by the laws of this state, such marriage shall be null and void for all purposes in this state with the same effect as though such prohibited marriage had been entered into in this state.

SEC. 2. No marriage shall be contracted in this state by a party residing and intending to continue to reside in another state or jurisdiction if such marriage would be void if contracted in such other state or jurisdiction and every marriage celebrated in this state in violation of this provision shall be null and void.

SEC. 3. Before issuing a license to marry to a person who resides and intends to continue to reside in another state the officer having authority to issue the license shall satisfy himself by requiring affidavits or otherwise that such person is not prohibited from intermarrying by the laws of the jurisdiction where he or she resides.

SEC. 4. Any official issuing a license with knowledge that the parties are thus prohibited from intermarrying and any person authorized to celebrate marriage who shall knowingly celebrate such a marriage shall be guilty of a misdemeanor, and shall be punished by . . .

<sup>1</sup> The four paragraphs are the Evasions Act in full.

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### **7. CERTAIN OTHER PROVISIONS**

In addition to the provisions shown earlier the License Act contains a requirement that model forms for applications, statements, affidavits, licenses, certificates, etc., shall be prescribed by a state officer (to be specified), sample copies to be supplied to each authorized issuer of licenses. Supplies of forms, etc., and also the marriage docket book, are to be furnished by the state to each issuer at the cost of the "place" of issuance (IX).

Certified copies of marriage licenses and certificates are prima facie evidence of marriage (XXII).

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**PART II**  
**THE MARRIAGE LAWS BY TOPICS**



## II

### THE MARRIAGE LAWS BY TOPICS

#### I. INTRODUCTION

**T**HOSE who have shared in the increased interest recently shown in the laws controlling marriage have been badly handicapped in their efforts to study them through the absence of any up-to-date information on the subject. Nothing of a comprehensive character has been published since the Census Office issued a summary of such laws as they existed on December 31, 1906. During the intervening thirteen years there have been numerous changes, with the result that the census compilation is now much out of date.

In their preparation of the summary contained in the following pages the authors decided to restrict themselves to what seemed to be the more important features of the various laws, viewed from the social standpoint. By thus drawing a line which of necessity is a somewhat arbitrary one we have been able to present a briefer and it is hoped a more generally serviceable compilation than would have been possible otherwise. Among the subjects included only incidentally are the following:

- Bigamous marriages
- Consanguineous marriages
- Marriage by force, menace or duress
- Marriage by false personation
- Marriage and seduction proceedings
- Marriages irregularly carried out
- Marriage and illegitimacy

Other subjects covered by the census report but usually omitted entirely here are the following:

- Definition of the term marriage
- Void and voidable marriages
- What marriages may be annulled
- Fees for the issuance of licenses, etc.
- Re-marriage during the lifetime of a spouse
- Subsequent marriage after divorce
- Encouragement and restraint of marriage

It is apparent from a glance at the above lists that in the main the omitted subjects involve either highly technical legal distinctions, or are penal provisions enacted for the prevention of fraudulent marriages.

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This summary is as nearly up-to-date as it can be made from the codifications and session laws accessible in New York City.<sup>1</sup> For each state the latest volume consulted is shown under the heading "Authorities." Usually only statutory law has been considered, but in regard to marriageable age and common law marriages references have been made to court decisions.

Due to the loose manner in which certain laws have been drafted, the summaries sometimes contain ambiguous and conflicting provisions. Fortunately these points are not numerous. Except where they concern matters of special importance no attempt has been made to get explanations from correspondents in the states concerned. But in regard to the status of common law marriages and the marriageable age it was felt necessary to have our material verified. The retention of 49 lawyers for this purpose was out of the question and we accordingly appealed to the charity organization societies of the country—one in each state. When we could get no correspondent in that way, we addressed the state universities. Through these means we have obtained verification or correction of our statements on the two points named from lawyers in 46 states, and in many states other doubtful points have been submitted to them. Without this valuable assistance our results could not have been published, and we are deeply indebted to the societies, colleges, and professional men for their help.

For the sake of further check upon the accuracy of our summaries, copies of marriage law forms were obtained from practically all state officials who are authorized to prescribe them, and from issuers of licenses in selected cities in most of the remaining states. These forms were all compared with the summaries, and it is believed that the latter are substantially accurate.<sup>2</sup> Complete accuracy is impossible, as the following illustrations will indicate: In one state the secretary of the charity organization society presented our inquiry regarding common law marriages to two lawyers, and when she found they disagreed, a former judge was appealed to. The lawyer who assisted us in still another state wrote as follows in explanation of a conflict that we had noted: "That was a mistake of the Legislature in drawing the act."

To obtain brevity various qualifying phrases which are necessary in the law itself have been omitted from these summaries. Thus the statutes relating to the marriage of a minor ordinarily require the consent of his parent or guardian, or in some states his custodian or "next friend." We refer ordinarily only to the parent. It will

<sup>1</sup> In the law library of Columbia University.

<sup>2</sup> The authors will welcome word from any who may notice errors or omissions in order that these may be corrected or the necessary additions made in later printings.



## LAWS BY TOPICS

be understood that where there are no parents the law usually prescribes that these other persons may act in their stead.

This part of the compilation, Part II, contains a topical summary of the various state laws. For each of the 18 topics a comparison is offered between the states. Thus the points of agreement in their laws are brought out, and the points of contrast. In Part III the laws of each state are re-classified under the same headings that are used in the topical summary.

### II. SUMMARY OF LAWS BY TOPICS

#### 1. COMMON LAW MARRIAGES

Non-ceremonial or common law marriages<sup>1</sup> are recognized in most states. They have been clearly declared invalid in only 17 states—in six by statute, and in 11 others by court decisions. In three states where the status is doubtful they probably are not regarded as valid, and in three other states they probably are valid. The situation is shown in detail in the following list, the letters following each state in the first two columns indicating the method by which validity or invalidity of such marriages has been settled. The abbreviations used are s for statutory law and c for court decision. The letter q when added indicates that the validity or invalidity is established with certain qualifications:

INVALID	VALID	STATUS DOUBTFUL
Arizona (s)	Alabama (c)	<i>Probably invalid</i>
Arkansas (cq)	Colorado (c)	Connecticut
California (s)	Florida (c)	Delaware
Illinois (s)	Georgia (c)	Maine
Kentucky (sq)	Idaho (s)	<i>Probably valid</i>
Louisiana (c)	Indiana (c)	District of Columbia
Massachusetts (c)	Iowa (c)	New Mexico
North Carolina (c)	Kansas (sq)	Wyoming
North Dakota (c)	Maryland (cq)	
Oregon (c)	Michigan (c)	
Tennessee (cq)	Minnesota (c)	
Utah (s)	Mississippi (s)	
Vermont (c)	Missouri (c)	
Virginia (cq)	Montana (s)	
West Virginia (c)	Nebraska (c)	
Washington (c)	Nevada (c)	
Wisconsin (s)	New Hampshire (sq)	
	New Jersey (s)	
	New York (c)	
	Ohio (c)	
	Oklahoma (c)	
	Pennsylvania (c)	
	Rhode Island (c)	
	South Carolina (c)	
	South Dakota (s)	
	Texas (c)	

<sup>1</sup> For the purpose of this classification a marriage without either civil or religious ceremony—i. e., a marriage by consent or reputation—is regarded as a common law marriage even though a license may have been issued for it.

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Common law marriages have been subject to many subtle legal distinctions, making a strict classification impossible. Thus in Kansas, where common law marriages are valid, persons contracting them are subject to a fine. Maryland is classed here as recognizing such marriages in practice, in spite of the fact that technically the ruling is that recognition is denied.<sup>1</sup> In Louisiana and North Carolina it has been held that a license is not essential though solemnization is necessary. In Mississippi, however, where it was first declared by statute that a license was essential, a proviso was added later to the effect that the section is not to be construed "so as to invalidate any marriage that is good at common law." Mississippi has therefore been classed as recognizing common law marriages. In New Hampshire, similarly classed, the court decided that in the absence of evidence to the contrary a jury might find parties to be married on evidence that they had cohabited and acknowledged themselves to be man and wife, but that these facts of themselves did not constitute marriage.

It is interesting to notice the trend of thought on this subject since Howard's *Matrimonial Institutions* was published 15 years ago, as this is revealed in the changes that have occurred in the status of common law marriages. During the period considered such marriages have gained recognition in but two states, while in seven states recognition has been denied them. In five states in which such marriages were recognized in 1904 they are not recognized now, the reversal being accomplished in Illinois and Wisconsin through statutory enactment, and in Arkansas, Louisiana, and Tennessee through court decisions. The change has been in the other direction in New York state only. A previous provision abolishing common law marriages was omitted in 1907 when the act containing it was amended, and this was interpreted as restoring such marriages. In two states where the status of such alliances was unknown in 1904, they have since been declared invalid—in Arizona by statute and in North Dakota by judicial decision,—and in one state, Oklahoma, similarly situated at that time, they have been pronounced valid.

### 2. MARRIAGEABLE AGE

The term marriageable age, as used here, refers to the age below which a marriage may not be contracted even with the consent of parents. If, however, a marriage is contracted below the specified age, it is regarded as an inchoate or imperfect marriage, in a few states absolutely void, but in most states merely voidable or capable of being declared void on the ground of non-age on suit brought for the purpose. In the latter states the age below which a marriage

<sup>1</sup> For the decision on which this classification is based, see page 15.

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is regarded as an absolute nullity, in common law, appears to be seven years.<sup>1</sup>

In 17 states no marriageable ages have been fixed by statute. In nine of these—Florida, Maine, Maryland, Massachusetts, Missouri, Pennsylvania, Rhode Island, Tennessee, and Vermont—the common law marriageable ages of 14 for males and 12 for females have been formally recognized, and without a doubt those ages hold good also in Colorado, Idaho, and Mississippi. In several states included in the above count as having no statutory provision for a marriageable age there are special provisions more or less effective to the same end. Thus it is unlawful to issue a license to a male under 18 years or a female under 14 in the case of South Carolina,<sup>2</sup> or to females under 15 in the case of Washington. In Louisiana celebrants are forbidden to solemnize the marriage of males under 14 or females under 12. In Connecticut, if either party applying for a license is under 16 years of age, it is necessary to have the consent of a selectman of the town endorsed upon the license. In Delaware if the male is under 18 or the female is under 16 and the marriage is not confirmed after reaching those ages, the non-aged party may obtain a divorce. In Florida it is unlawful to contract a clandestine marriage with a girl under 16. In Vermont it is stated that marriages below 16 years of age may be annulled.

In the states where marriageable ages have been established by statute the most usual ages are 18 for males and 16 for females. The ages fixed are as follows:

- Males under 14—Kentucky and New Hampshire.  
15—Kansas.  
16—District of Columbia, Iowa, North Carolina, Utah, and Texas.  
17—Alabama, Arkansas, and Georgia.  
18—All other states, if not listed above as having no marriageable age.<sup>3</sup>
- Females under 12—Kansas, Kentucky, and Virginia.  
13—New Hampshire.  
14—Alabama, Arkansas, District of Columbia, Georgia, Iowa, North Carolina, Texas, and Utah.  
15—California, Minnesota, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, and Wisconsin.  
18—New York.  
16—All other states, if not listed above as having no marriageable age.<sup>3</sup>

<sup>1</sup> A leading authority has written as follows in regard to this subject:

"If both parties have arrived at the age of seven, and either is below his or her [common law] age of consent—that is under 14 or 12—or, if both are, they may still contract an inchoate or imperfect marriage . . . . They can not avoid or annul this marriage until the one discarding it has reached the age of consent for such party . . . . whether it be 12 or 14, and perhaps not until the other has arrived at his or her age of consent." (Bishop, J. P.: *Marriage, Divorce and Separation*, Vol. I, Sections 572 and 573.)

<sup>2</sup> Since a license in South Carolina is "essential to the validity of a marriage" these ages for obtaining a license are inferentially also the marriageable ages.

<sup>3</sup> Regarding the inclusion of New Jersey in this group, see page 96 (3) following.

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In five states marriages below the marriageable age are declared to be void, and in 15 states voidable only. The five states in the first group are Michigan, New Mexico, Ohio, Utah, and Virginia. The wording of the Virginia law is very specific—"void without legal process if the parties separated during such non-age and do not cohabit afterward." New Mexico and Ohio use the term "invalid." In Michigan such marriages are void if the parties have separated by mutual consent during such non-age, or if the non-aged party elects to terminate the marriage relation before arriving at the age of consent. We are advised, however, that in practice legal process is necessary to establish the facts on which the status is thus conditioned; hence the marriage becomes in fact voidable only. The 15 states in which such marriages are voidable only are Alabama, Arkansas, District of Columbia, Illinois, Indiana, Minnesota, Mississippi, Nebraska, New Jersey, New York, Oklahoma, Oregon, West Virginia, Wisconsin, and Wyoming. In certain states the wording is that these marriages are void from the time their nullity is declared by a court, or that they may be annulled under specified conditions.

In four states—Arizona, Ohio, Oklahoma, and Michigan—there are special exceptions to the statutes establishing the marriageable ages. In Arizona the exception applies under specified circumstances to anyone who is the prospective parent of a child; in Ohio to cases of pregnancy; while in Oklahoma marriages below the specified ages may be authorized by the court in settlement of suits for bastardy and seduction; and in Michigan the marriage of a female below the marriageable age is allowed on her oath before a specified judge that she is with child, which if born before her marriage will be illegitimate, or that she is living with a man and has been considered as his wife, or for other good reason deemed sufficient by the judge.

### 3. THE MARRIAGE LICENSE

**a. Requirement.** All states have some sort of a license provision, but only one state, Wisconsin, has followed the recommendation of the Commissioners on Uniform Laws in declaring that no marriage is valid unless a license for it has been issued, actually or constructively,<sup>1</sup> as prescribed by law. The Mississippi provision, mentioned in an earlier paragraph, is, however, much the same. It states that a license is essential to the validity of a marriage. The qualification that this shall not invalidate common law marriages does not seem to affect the status of the license. On the other hand, the South Carolina provision, that it is unlawful to contract marriage without a license, but that this shall not "render

<sup>1</sup> For the conditions under which a license is thus "deemed" to have been issued, see p. 22.

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any marriage illegal<sup>1</sup> without a license," does not have the same effect.

Most states merely decree that marriages shall not be solemnized without a license, or unless a license has been obtained, or has been issued, or has been produced to the celebrant; or they put the implied obligation on the contracting parties by declaring that all who intend to marry are required to obtain a license. Four states, three of them in New England, declare that all who intend to marry must apply for a license (file a "notice of intention"). In Colorado it is provided merely that the specified official shall have authority to issue a license. Very similar provisions appear in the laws of Kansas and Louisiana. In only one state, Maryland, is any penalty provided for those who contract marriage without a license (or without the publication of banns). Such persons are subject to a fine of \$100. It is clear that the strength of the license system rests not on the provisions which require a license for lawful marriage, but on the provisions summarized under 4a below, which require all celebrants to demand its presentation.

In at least five states—Illinois, Indiana, Iowa, Kansas, and Minnesota—members of the Society of Friends, or, in certain states, of other religious societies, are not required to obtain a license. In Illinois this exemption is conditioned upon a week's notice to the society's standing committee. In three other states—Georgia, Maryland, and Ohio—a marriage license is not required for marriages preceded by the publication of banns.

**b. Where the license is obtained.** Marriage licenses are issued by a variety of officials in the different states, the county clerk or the clerk of the county court being the one ordinarily specified. In New England the town clerk is usually the issuing official. In a few states probate judges are given this authority.

A question of greater importance relates to the territorial jurisdiction of the issuing officer. In the largest number of states the license may be issued by the specified officer of the county (or town) in which the marriage is to take place, quite irrespective of the residence of the contracting parties. The 15 states in which this is true are Arizona, California, Connecticut, Illinois, Iowa, Maryland, Montana, Nebraska, New Mexico, North Carolina, Oklahoma, Pennsylvania, South Dakota, Wisconsin, and Wyoming. In nine states—Arkansas, Colorado, Delaware, Idaho, Kansas, Missouri, South Carolina, Texas, and Washington—there is even less restriction, for the license may be issued in any county in the state. In eight states—Alabama, Florida, Georgia, Indiana, Mississippi, Ohio, Oregon, and West Virginia—the license must be issued in the county in which the female resides. Several states which have residence

<sup>1</sup> Interpreted by our correspondent in South Carolina to mean "invalid."

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restrictions allow licenses to be obtained in the county in which the marriage is to take place in the case of marriages involving non-residents.<sup>1</sup>

In five states both of the parties are obliged to appear before the issuer of licenses. This is true in Arkansas, New Jersey, New York, Ohio (with an exception in the case of physical disability), and Rhode Island. In Montana, by contrast, the application may be made by an attorney for either party, and in New Mexico and Wisconsin the parties may make the required affidavits before any officer authorized to administer oaths, and in Pennsylvania before a specified local official, and he shall have them identified (in New Mexico and Wisconsin) and forward their statements to the issuing officer. In most states the intention of the law probably is that at least one of the contracting parties shall make the application personally, but usually this requirement is not clearly stated.

In Michigan, by a special act "for the protection of the reputation and good name of certain persons,"<sup>2</sup> if the female makes affidavit that she is with child which if born before her marriage will be illegitimate, a license may be granted by a specified judge, and the usual restrictions as to age, marriage record, etc., do not apply. The judge may also marry the couple and is required to keep the certificates of such marriages in a special private file.

c. *Advance notice, objections, etc.* Only eight states require advance notice to be given before a license may be issued. In five of them—Maine, Massachusetts, New Hampshire, New Jersey, and Wisconsin—all applicants must give such notice, but in the remaining states—Connecticut, Rhode Island, and Vermont—the requirement applies only to non-residents, this latter term being restricted in different ways in each of the three states. Five days is the period of advance notice prescribed except in the case of New Jersey, where it is 48 hours. In several of these states provision is made for an immediate issuance of the license on order of the court in the case of immigrants or in cases of emergency due to physical condition, etc. Only one state, Wisconsin, provides that the notice shall be posted.

In but two of the eight states, Maine and Wisconsin, is there definite provision for the filing and hearing of objections. By the Maine statute any person may file a "caution," and the issuer shall then withhold the license until a decision is rendered by two justices of the peace approving of the marriage. In Wisconsin certain specified relatives only, or a guardian of either applicant, may file objec-

<sup>1</sup> Correspondents in several states where licenses must be obtained in the place where the female resides explain that non-residents of the state obtain licenses under this law, for it is assumed when they make application that they are residents, the law not specifying how many days are required to obtain residence.

<sup>2</sup> See pp. 34 and 83 (3b).

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tions. If the court finds that the statements in the application are wilfully false or insufficient, or that either party is not competent to marry, it shall issue an order refusing the license. In Pennsylvania and Virginia, which have no law regarding advance notice, objections are provided for, and a procedure is established for their hearing by the court. For states which provide that objections must be considered by the celebrant before uniting the parties in marriage see 4d, below.

In two states a period of time must elapse after the issuance of the license before the marriage may be performed. In Delaware there must be a period of at least 24 hours, and if both parties are non-residents, of at least 96 hours; in New Jersey it is 24 hours for all applicants, except that in case of arrest on certain criminal charges the marriage may be performed immediately. In states in which publication of banns is allowed in place of obtaining a license, as shown under 3a, above, there exists for those whose banns are published a required period of delay before the marriage ceremony may be performed.

d. Parental consent. Every state requires the consent of the parent, guardian, etc., either for the issuance of a certificate or for the marriage of females under certain specified ages, and all states except Georgia and Michigan have a corresponding requirement regarding males. Eight states—Alabama, California, Florida, Kentucky, Minnesota, Nevada, Ohio, and Utah—waive this requirement if the minor has been previously married. The ages established vary considerably, as is shown in the following list, but the predominating ages are 21 for males and 18 for females.

- Males under 16—Tennessee.  
18—Idaho, North Carolina, New Hampshire, and South Carolina.  
21—All other states (except Georgia and Michigan).
- Females under 16—Maryland, New Hampshire, and Tennessee.  
21—Connecticut, Florida, Kentucky, Louisiana, New Mexico, Pennsylvania, Rhode Island, Virginia, West Virginia, and Wyoming.  
18—All other states.

In no state is any evidence required, other than an affidavit, for the assurance of the issuer of licenses that the applicant has in fact reached the age for marriage without parental consent. In Alabama, Kansas, Massachusetts, and Mississippi the applicant himself or herself may make the affidavit. The Alabama provision is typical; the forfeit upon one who issues a certificate without the required consent is not recoverable if an affidavit was made by the minor or some other credible person that the minor was of the required age. In Louisiana also the applicants must furnish proof, presumably of their age, and in Rhode Island they must make oath to the facts.

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In Indiana, North Dakota, and Oregon the affidavit must be made by some other person. In Florida the issuer must merely require satisfactory evidence, and in North Carolina he must make reasonable inquiry. In Illinois it is the parent who is to make the affidavit as to the age of the minor and to give such other proof as the clerk may require. In Georgia the issuer must inquire as to the ages of the applicants, and if there is any ground for suspicion that the female is under the specified age, must refuse to grant the license without parental consent.

In certain states—presumably for the sake of assurance that the parents have actually given their consent—it is provided that there must be witnesses to the signature, or in some cases an acknowledgment of the document. The states in which substantially this requirement appears are Alabama, Delaware, District of Columbia, Iowa, Kansas, Kentucky, Maryland, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Jersey, North Dakota, Ohio, Pennsylvania, Utah, Virginia, West Virginia, and Wyoming.

In 20 states no specific penalty is prescribed for an official who issues a certificate to a minor below the specified ages without requiring parental consent. These states are Arkansas, California, Delaware, District of Columbia, Florida, Louisiana, Michigan, Missouri, Montana, Nebraska, Nevada, New Jersey, Pennsylvania, Rhode Island, South Carolina, Texas, Colorado, Idaho, Maryland, and New Mexico. In the four last named states, however, the celebrant is subject to a penalty if he performs a ceremony in such cases.

e. **Form of license.** The form and contents of the license are usually prescribed. It is usually also stated that the license shall authorize the solemnization of the marriage of the parties named by anyone who has the general authority to do so. Some such form is implied in the word license and seems to be followed everywhere, though in a few states it is not prescribed explicitly in the law. Aside from these fundamental features the facts which the license must contain, and in each case the number of states requiring the specified fact, are as follows:

- Parties' residences (23)
- Ages (16)
- Race or color (13)
- Birthplaces (10)
- Names of parents<sup>1</sup> (10)
- Marital condition (9)
- A statement that—
  - Parental consent has been given, if required (6)
  - No legal impediment exists (3)
  - Parties are free from certain diseases (1)
- Name of the parent giving consent, if required (1)

<sup>1</sup> In three states called "parentage," and in three other states it is the mother's maiden name that must be given.



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Occupation of the prospective husband (4)  
Occupation of each party (3)  
Manner in which a previous marriage, if any, has been dissolved (3) |  
Probable date of the marriage (3)  
Probable place of the marriage (3)  
Probable celebrant, the license being addressed to him (2)  
Probable celebrant (1)  
Relationship, if any, of the contracting parties (1)  
Maiden name of the prospective bride, in case she is a widow (1)  
Date when the marriage must be reported to the issuer of the license (1) |  
Penalty established for a failure to report the marriage (1)

**f. Record of license.** There are explicit provisions calling for a record of the license on the part of the issuer in all states except California, Idaho, Illinois, Kentucky, Massachusetts, and Nevada, where there is no such provision, and Colorado, South Carolina, and Utah, where the provision apparently does not cover all licenses that are issued, and Connecticut and New Jersey, where there is only an indirect provision for the record through a form of license established by some state official. In most of the states where such a requirement exists no penalty is prescribed for failure to make the record. The exceptional states in this particular are Alabama, Missouri, New York, North Carolina, North Dakota, Pennsylvania, Virginia, and Wisconsin.

**g. Life of license.** In all but a very few states the license, once issued, is good at any future time for the marriage of the parties named. In eight states, however, the life of the license is limited. These states, and the period during which the license is good, are as follows: New Jersey, Oklahoma, and Wisconsin, 30 days; Arkansas, North Carolina, and Pennsylvania, 60 days; Massachusetts, six months. In Missouri the life of the license is indirectly limited by the provision that it must be returned to the official who issued it within 90 days after its issuance.

**h. Other requirements and prohibitions.** Nineteen<sup>1</sup> of the 49 states have no restrictions upon the marriage of persons suffering from physical or mental disabilities. Usually these restrictions are expressed as prohibitions upon the issuance of the license to the classes of persons specified, but in 14 states<sup>2</sup> the marriage of such persons is merely prohibited or their marriage contract, if made, is declared void. Provisions of the latter sort, which are classified

<sup>1</sup> These are Arizona, Arkansas, Colorado, Florida, Idaho, Iowa, Louisiana, Maryland, Mississippi, Missouri, Montana, Nevada, New Mexico, North Carolina, Oklahoma, South Dakota, Tennessee, Texas, and Wyoming. In Iowa and South Dakota indirect restriction upon the issuance of licenses to those disabled mentally may be read into the provision that the clerk is forbidden to issue a marriage license when either party is disqualified from making any other civil contract.

<sup>2</sup> Connecticut, District of Columbia, Georgia, Illinois, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Nebraska, Rhode Island, South Carolina, Utah, and West Virginia.

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under (7), following, are of course more difficult of enforcement, for the burden of disqualifying the specified groups is not placed with definiteness upon any public official. It is true, however, that in many states the issuer of the license must satisfy himself that there is no impediment to the marriage, and thus indirectly become responsible for the enforcement of the prohibitions referred to.

As a matter of practice the effectiveness of the two types of restrictions may not be very different, for where the license clerk is definitely forbidden to issue a license to the classes named it is usually specified or implied that the facts shall be established merely by affidavits. Thus in Delaware, Indiana, Ohio, Pennsylvania, and Washington the applicants themselves swear to the fact that they have none of the disabilities their laws specify, and in New York and Virginia their oath refers only to their freedom from venereal disease. In New Jersey the oath of a witness is required in addition, but in the laws of California, Kansas, and Vermont no method of establishing the necessary facts is stated. In only four states—Alabama, North Dakota, Oregon, and Wisconsin—is there any requirement that freedom from the specified physical or mental disabilities shall be established by physicians' certificates,<sup>1</sup> though certification by a physician may be required in the discretion of the issuer of licenses in New Hampshire and Virginia regarding mental disorders. In North Dakota the physician's affidavit merely states that the applicant is free from the specified ailments; in Oregon it is provided that the affidavit must be made not more than 10 days prior to the application for the license; and in Alabama and Wisconsin all males must be examined regarding venereal disease not more than 15 days prior to their application, and the physicians' certification on that point is to be based on the examinations so made. In Michigan where there is merely the general provision forbidding the marriage of those with specified disabilities, there is also the requirement that physicians' certificates shall establish the facts. In Vermont this applies only to venereal disease, and in Michigan to all specified disabilities except venereal disease. The wording of the Vermont law is unusual. The marriage of any person is forbidden who has been told by a physician that he or she is afflicted with gonorrhœa or syphilis, without a physician's certification of freedom from such disease.

In five states all or part of the restrictions for physical or mental reasons do not apply to females above 45 years of age. The imbecile and insane are named in most of the restrictive laws and the epileptic and feeble-minded almost as often. Where the burden of enforcement is definitely placed upon the issuer of licenses, a part of the formula ordinarily is that no license shall be issued to a person who

<sup>1</sup>For the issuance of a license.

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at the time of application is under the influence of intoxicating liquor or a narcotic drug. Four states—Indiana, New Jersey, Pennsylvania, and Vermont—with certain exceptions, disqualify paupers or inmates, or in some cases former inmates, of public institutions for the indigent. Indiana and Pennsylvania include in their lists those suffering from any transmissible disease. North Dakota includes drunkards, Ohio habitual drunkards, and Washington "common drunkards." Washington and North Dakota also include those suffering from tuberculosis in its advanced stages. North Dakota, Virginia, and Washington have disqualified habitual criminals. The most recent restrictions relate to the venereal diseases. Nine states mention them. In Alabama, Michigan, New York, Vermont, Virginia, and Wisconsin, both sexes are included (though the requirements regarding examination in Alabama and Wisconsin apply only to males), but in North Dakota, Oregon, and Washington the restriction relates only to males.

In addition to the physical and mental restrictions upon the issuance of licenses, we have summarized under this general heading the other miscellaneous obligations placed upon the issuer of the license. In most states he must ascertain a variety of facts, some of which, for some states, are to be entered upon the license and so are shown under 3e above. In 21 states he must assure himself that no legal impediment exists, or must be assured of "the legality of the marriage," or of "the competency or qualifications of the parties to marry," etc. There are also penalties to which an issuer is subject for issuing a license for miscegenetic marriages or issuing licenses in any way contrary to law, and penalties to be imposed upon any one who swears falsely to any fact in connection with the obtaining of a marriage license.

### 4. SOLEMNIZATION

a. **The celebrant.** In all states except Maryland, where civil marriages are not allowed, marriages may be solemnized by both religious and civil celebrants. In most states the persons who may officiate are specified by law; but in Maryland,<sup>1</sup> Pennsylvania, and West Virginia there is no specification. Apparently anyone may perform the marriage ceremony in the two latter states, and in Maryland also, if it is a religious ceremony.

Many different civil officials are specified. Most states—all except Delaware, Florida, Maryland, New Jersey, New Mexico, Oregon, Pennsylvania, Rhode Island, South Carolina, Virginia, and West Virginia<sup>2</sup>—include not only their higher judicial officers but

<sup>1</sup> For an indirect specification in the Maryland law, see p. 79 (4a).

<sup>2</sup> In Kentucky, Massachusetts, and New York justices of the peace may solemnize marriages but under decided territorial and other restrictions. See the summary of the laws of these states in Part III.

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their justices of the peace as well. In eight states any alderman may join people in marriage. These are Colorado, Connecticut, Georgia, Kansas, Nebraska, Tennessee, Wisconsin, and Wyoming. In four states—California, New Jersey, New York and Wisconsin—any police court judge may officiate. In Florida and Maine any notary public may perform the ceremony, and in South Carolina the list includes any officer authorized to administer oaths. A few states allow their governors or mayors to share in this function, and two states provide that persons may be specially appointed for the purpose—in Virginia by the court and in Maine by the governor. In the latter case it is specified that women may be appointed.

In 34 states there is no official list of those authorized to solemnize marriage according to religious rites. The provision of the Iowa law is representative of the largest group of states: The marriage ceremony may be performed by any minister of the gospel, ordained or licensed according to the usages of his denomination, or it may be performed by any denomination having peculiar methods of entering the marriage relation. In Delaware and Pennsylvania, however, all religious celebrants must report their names and residences to a specified official, who shall register them. If the celebrant moves to another place he must report that fact within 30 days. Oklahoma has gone farther, requiring all religious celebrants to file their credentials. In Oregon the credentials must be "approved" and then recorded. In eight other states—Arkansas, District of Columbia, Maine, Minnesota, Nevada, Ohio, Rhode Island, and Wisconsin—each religious celebrant must obtain a clergyman's certificate or license. In Kentucky, Virginia, and West Virginia he must give bond for the proper performance of his duties.

In all but nine states a minister from any part of the United States may apparently solemnize a marriage. In a few states this wide range of authority is explicitly given. Thus in Louisiana any minister of the gospel or priest of a religious sect qualifies as a celebrant whether he is a citizen of the United States or not. Ordinarily, however, there is no reference to the territorial bounds of authority. The nine exceptional states which limit solemnization to ministers of the state are Indiana, Massachusetts, Michigan, Missouri, Nevada, New Hampshire, Ohio, Vermont, and Washington.

In a number of states it is provided that the clergyman must be "in regular communion" or "in regular standing" in his denomination, or that he must be one who continues in the work of the ministry. An interesting requirement was added to the Massachusetts laws a few years ago to the effect that no one may legally solemnize marriage who is unable to read and write in the English language.

**b. Presentation of the license.** The effectiveness of the marriage

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license system depends largely upon the requirement that a license must be presented to the celebrant before a marriage ceremony can legally be performed. Such a requirement appears explicitly in all states except Iowa, Nebraska, and Wyoming, though in three states—Arkansas, Minnesota, and Washington—it has to be implied from certain general provisions or penalties. In the three states in which publication of banns is allowed as a substitute for obtaining a marriage license,<sup>1</sup> there is, of course, no general requirement that a license must be presented.

The importance attached to this provision is indicated in the penalties established for its violation. In Alabama any one who solemnizes a marriage without requiring a license is to be fined \$1,000, and in six other states—California, Kansas, Kentucky, Louisiana, Rhode Island, and Utah—the fine may be as large as that. In 13 states it may be \$500. In California, Michigan, Pennsylvania, and Wisconsin, it must be at least \$100, while in only one state, Vermont, may the special penalty for this offense be as small as \$10. In 13 states the clergyman or civil celebrant who is found guilty may be imprisoned. In seven of the latter—California, Kentucky, New York, Utah, Virginia, West Virginia, and Wisconsin—the period of imprisonment may be one year. In California, Delaware, Kentucky, Nevada, New Jersey, Utah, West Virginia, and Wisconsin, a fine may be imposed and the guilty celebrant imprisoned also. The seven states in which the desirability of guarding this provision against violation through some special penal provision has apparently not been recognized are Arizona, Florida, Mississippi, Montana, New Mexico, South Dakota, and Tennessee.

c. **Form of ceremony.** In 19 states no special form of ceremony is provided for. Probably the most important provision in the laws of the other states is that relating to witnesses. In 20 states witnesses are required for all marriages, and in two other states—Colorado and New Mexico—the form of certificate established by law provides for witnesses. In California and Illinois witnesses are required in the case of marriages without a celebrant. In 14 states there must be a declaration that the contracting parties take each other as husband and wife.

d. **Other requirements and prohibitions.** It is clear from the provisions summarized under this heading that our laws do not rely entirely upon the issuer of licenses to make sure that no improper marriages are performed. In all but five states—Connecticut, District of Columbia, Mississippi, Missouri, and Texas—there are special requirements, prohibitions, etc., relating to the celebrant in addition to the general one that he must require the presentation of a marriage license. The restriction most frequently imposed is that

<sup>1</sup> See 3a, above, p. 35.

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he shall not perform a ceremony where the marriage would be contrary to the marriage law, or where the persons are forbidden by law to marry, or where he has knowledge of legal impediments, the persons being prohibited from marrying, or incapable of marrying, or suffering from a disability which renders the marriage contract illegal. Twenty states have provisions phrased along one or more of the above mentioned lines. Fifteen states definitely forbid the solemnization of a miscegenetic marriage, and in 10 states incestuous marriages are similarly mentioned. In nine states also the celebrant must be assured, if the contracting parties are under the specified ages, that parental consent has been given. In Delaware, Georgia, Kansas, Minnesota, New Hampshire, North Dakota, South Dakota, Virginia, Washington, Wisconsin, and Wyoming the celebrant must not solemnize the marriage of mental defectives. In Kansas, however, this prohibition does not apply to females over the age of forty-five. Other states mention physical defectives, epileptics, etc.

In several states the celebrant is made responsible for certain administrative features. Thus in Delaware he must not solemnize a marriage unless the prescribed number of hours have elapsed since the issuance of the license, and in Vermont a similar restriction is imposed in the case of non-residents. Massachusetts seems to be the only state in which the celebrant is definitely forbidden to solemnize marriages after the license of the contracting parties has expired.

### 5. THE MARRIAGE RECORD

**a. Certificates and their distribution.** In every state the celebrant is obliged to send a report of the marriages he solemnizes to some public official—usually to an official of the county or township. In most states this report must be made within 30 days, but in California, Indiana, and Wisconsin three days is specified; in Delaware four days, in New Jersey five days, and in Maine and New Hampshire six days (with a longer time allowed in the latter states, and in Wisconsin in case of residents marrying elsewhere). On the other hand, a report is not required until within 60 days in North Carolina, Texas, and West Virginia. No time whatever is stated in Arkansas and Georgia, and in Oklahoma the report is to be made "without delay."

In most states the report of marriages performed is made to the official who issued the license. In some states a report is made to the corresponding official in the county (or town) in which the marriage was performed. As a result, the issuing official does not automatically receive reports regarding all marriages performed on the licenses he has issued. This difficulty has been met in a few

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states by a provision that under such circumstances the official in the place of solemnization must send a copy of the certificate he receives to the issuing official in the party's place of residence.

b. **Local record.** With the sole exception of New Jersey, where the omission seems to have been unintentional, all states provide that the marriage certificate shall be recorded by the proper local official in the county or town when it has been returned to him by the celebrant. In 26 states, however, no specific penalty has been provided for failure to make this important record, or to provide any general penalty which seems applicable.<sup>1</sup>

In nine states there are special provisions intended to insure complete recording. Thus in Connecticut, New Hampshire, New Jersey, Rhode Island, and Vermont, when the specified official receives a certificate of a marriage performed within his jurisdiction, and either of the parties is a resident of another jurisdiction, he shall send a copy of the certificate to the proper official in the other jurisdiction. In Maine it is provided that the issuing official shall enforce the provisions relating to the return of the marriage certificate so far as is possible; in Mississippi he must examine the records once a month, and if any celebrant is found in default he shall institute inquiry and issue a summons requiring the return of the certificate; in Missouri he is required to certify the list of delinquents to the grand jury, and is subject to a penalty for failing to do so; and in West Virginia the assessor of the county is required to make inquiry of all persons assessed by him, and report any not shown in the marriage indices. He is subject to a penalty for failing to do this, and persons who refuse to give him the desired information on request are also subject to a penalty.

In Maryland the issuing official is required to keep a "Foreign marriage record book," and to enter in it all certificates of marriage contracted in other states when one or both of the parties are citizens of Maryland.

c. **State record.** In 20 states the local record of marriages referred to in the preceding paragraph is the only record required by law. The states which thus require no state registration of marriages are Arizona, Colorado, Florida, Georgia, Kentucky, Minnesota, Mississippi, Missouri, Montana, Nevada, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Utah, and Wyoming.

<sup>1</sup> These states are Delaware, District of Columbia, Florida, Georgia, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Mississippi, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, and Washington; and Arkansas, California, Colorado, and Missouri, where penalties are provided for making a false record but no penalties for failing to make any record.

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In Pennsylvania responsibility for the registration is placed upon the state registrar, but in all other states the local official is required to make reports to the state official. The eight states in which annual reports are required are Illinois, Iowa, Louisiana, Massachusetts, Nebraska, Rhode Island, Virginia, and West Virginia. Quarterly reports are required in five states—Delaware, Idaho, Michigan, New York, and Washington—and monthly reports in the remaining 14 states.

Most of the 27 states in which reports to a state officer are required impose a penalty on the official who fails to comply with the law on this point. The 13 states in which no specific penalty appears, and no general penalty which seems applicable, are Alabama, Arkansas, Idaho, Illinois, Indiana, Iowa, Michigan, New Jersey, New York, Rhode Island, South Dakota, Washington, and Wisconsin.

### 6. INTER-STATE RELATIONS

Twelve states have laws to the effect that a marriage valid "where contracted" is valid in the states in question.<sup>1</sup> These states are Kansas, Kentucky, Montana, Nebraska, New Mexico, North Dakota, South Dakota, Utah, and Wyoming, and also California, Colorado, and Idaho, in which three states the law relates only to "the country where contracted." In Kansas and Montana also it is subject to certain exceptions. Under such a law, which merely embodies a general rule of international (or inter-state) law, it appears that two classes of persons may be covered—residents of a state who marry there and later become residents of another state, and residents of a state who go to another state for the mere purpose of marriage. For the first group the above mentioned law merely confirms a generally recognized right. To the second group, however, this law or general rule, as interpreted in some states, gives legal sanction to marriages contracted in other states for the purpose of evading certain at least of the laws of one's own state of residence—the so-called "Gretna Green marriages." In Kentucky the provision is specifically limited to this second group—residents of Kentucky who marry in another state.

<sup>1</sup> For a full discussion of this question see the Proceedings of the Commissioners on Uniform State Laws, 1912, p. 126. According to a recognized authority "the validity of a marriage is determined by the law of the place where it was contracted or celebrated, and if valid there it will, generally, be held valid in any state or country in which the parties may subsequently reside, although it would have been invalid by the law of such subsequent domicile if contracted there, and, according to some authorities, even where the parties left the state of their domicile and went to a foreign state or country and were there married, for the purpose of evading the restrictions of the laws of their domicile." (Mack, William: *Encyclopedia of Law and Procedure*, Vol. 26, p. 829. The American Law Book Co., 1907.)



## LAWS BY TOPICS

The danger to a state's own standards, inherent in such a law—or such a general rule of legal interpretation where there is no such law—is apparent. To avoid that danger, in the latter cases, 14 states have passed special laws known usually as “marriage evasions acts.” Most of these provide that *all* marriages are void if contracted by residents of the state who intend to remain so and who go to another state for the purpose of marriage, provided they would be void in the parties' own states of residence. Sometimes, however, the provision relates only to marriages for the evasion of certain specified restrictions. Thus in Missouri it applies only to bigamous marriages; in Mississippi it applies only to incestuous and miscegenetic marriages; in Maine to bigamy, incest, and the marriage of mental defectives; in Virginia to miscegenetic and incestuous marriages; in West Virginia to these and also to bigamous marriages, or the marriage of an insane or physically incapable person or person under the age of consent. In the nine other states in this group—Arizona, District of Columbia, Georgia, Illinois, Indiana, Louisiana, Massachusetts, Vermont, and Wisconsin—the provisions relating to evasion are general.

### 7. CERTAIN OTHER PROHIBITIONS

The most important prohibitions summarized under this heading—prohibitions relating to physical or mental disabilities—have been referred to for convenience in an earlier paragraph. In addition there are prohibitions in 28 states relating to miscegenetic marriages.<sup>1</sup> In Alabama, Massachusetts, New York, and Oregon, there are also special provisions making it a criminal offense—“abduction” in New York—to take a girl away from her parents for the purpose of marriage without the parents' consent. The ages below which this provision applies are 14 in Alabama, 16 in Massachusetts and Oregon, and 18 in New York.

### 8. OTHER RELATED SUBJECTS<sup>2</sup>

Bigamous marriages are illegal and void in every state. In defining the punishment for bigamy each state allows for a defense the absence of the former husband or wife for a certain period, usually five years, with presumption of death. The wording of the law varies in the different states, some laying more emphasis on the pre-

<sup>1</sup> Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Indiana, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and West Virginia.

<sup>2</sup> For reasons explained in the Introduction these subjects are not included in Part III, The Marriage Laws by States.

## AMERICAN MARRIAGE LAWS

sumption of death than others. A marriage under such circumstances is usually void from the time its nullity is declared by the court, though in some states it is absolutely void from the beginning in case the absent spouse returns.

Consanguineous marriages—within the prohibited degrees of consanguinity or affinity—are illegal and void in all states, and there is little difference in the lists of prohibited degrees. These include ancestors and descendants of every degree, brothers and sisters, uncles and nieces, aunts and nephews, and certain step relationships. In certain states first cousins, and in others even double first cousins, are not permitted to marry.

Marriages by force, menace or duress are declared by statute to be void in many states. In others they are held voidable by decisions. Suits to annul marriage under such laws are usually brought by a man who has been forced into marriage with a woman whom he has seduced. The decisions in such cases are conflicting.

In certain states marriage under false personation is made a felony.

A number of states provide that inter-marriage of the parties to a seduction proceeding shall bar or suspend further prosecution. In the state where such prosecution is merely suspended by marriage, it may be revived in case of abandonment by the husband within a certain number of years. In a few states an offer of marriage by the defendant is sufficient to bar prosecution.

A majority of the states provide that want of authority or jurisdiction on the part of the celebrant shall not invalidate a marriage where the contracting parties or either of them have acted in good faith and in the full belief that it was a lawful marriage. Other technical omissions and informalities are also recognized in various laws as not invalidating the marriage.

In most states illegitimate children are legitimized by the subsequent intermarriage of their parents. Sometimes recognition by the father is also required.

**PART III**  
**THE MARRIAGE LAWS BY STATES**



### III

## THE MARRIAGE LAWS BY STATES

### ALABAMA

**Authorities.**—Code of 1907 (references are to its sections unless otherwise specified); Laws through 1915.

#### 1. COMMON LAW MARRIAGES

Such marriages are recognized (*Williams v. State*, 54 Ala. 135; *Beggs v. State*, 55 Ala. 108; *Tartt v. Negus*, 127 Ala. 308).

#### 2. MARRIAGEABLE AGE

Males 17; females 14. Persons under these ages are incapable of contracting marriage (4879), but such marriages are voidable only (*Beggs v. State*, 55 Ala. 108).

#### 3. THE MARRIAGE LICENSE

a. **Requirement.**—No marriage shall be solemnized without a license (4884).

b. **Where obtained.**—From the judge of probate of the county in which the female resides (4884).

c. **Advance notice, objections, etc.**—No provision.

d. **Parental consent.**—Required for males under 21 and females under 18, unless previously married. It must be given either personally or in writing; if the latter, execution must be proved (4885). **Penalty.**—Any one who issues a license without the required consent forfeits \$200 to the parent for the use of the minor (4888), but this is not recoverable if it be shown that the parent consented to the marriage or if affidavit was made by the minor or some other credible person that such minor was of the required age (4889).

e. **Form of license.**—It authorizes the marriage and gives the names of the applicants (4884).

f. **Record of license.**—The license must be recorded, together with parental consent when required (4886). **Penalty.**—Any one who fails to record a license for more than five days after it has been returned by the celebrant, or who fails to record any consent required by law to be given before issuance of the license, is guilty of a misdemeanor (7390). No penalty is specified.

g. **Life of license.**—No provision.

h. **Other requirements and prohibitions.**—A bond must be executed in the penal sum of \$200 payable to the state with condition to be void if there is no lawful cause why the marriage shall not be celebrated (4885).

For knowingly issuing a license for a miscegenetic marriage the issuer "must be fined from \$100 to \$1,000 and may also be imprisoned or sentenced to hard labor for not more than six months" (7422).

No license may be issued to a person who fails to present to the issuer a certificate by a licensed physician setting forth freedom from venereal diseases so nearly as can be determined by a thorough examination and by the application of the recognized clinical and laboratory test of scientific search, when in the discretion of the examining physician such clinical and laboratory tests are necessary. All males within fifteen days prior to application for a license shall be examined.

## AMERICAN MARRIAGE LAWS

**Penalties.**—Any one who unlawfully issues a license to marry any male person who fails to present to the issuer a certificate as required is subject to a fine of not less than \$50 nor more than \$100, or to be sentenced to hard labor for not over six months, or both. Any physician who knowingly and wilfully makes any false statement in the certificate is subject to a fine of not more than \$100, or to be sentenced for not more than six months to hard labor. (Acts of 1919, No. 178.)

### 4. SOLEMNIZATION

**a. The celebrant.**—A judge of the supreme, circuit or city court; a chancellor within the state; a judge of probate or any justice of the peace within his county (4881); any licensed minister of the gospel in regular communion with the Christian church or society of which he is a member (4881); the pastor of any religious society according to the rules or customs of such society (4882); Mennonites or Quakers or other Christian societies having similar rites according to their forms (4883).

**b. Presentation of license.**—For marrying persons without a license the celebrant is subject to a forfeit of \$1,000, half of which goes to the state and half to any person who may sue for it (4890). For going out of the state and solemnizing the marriage of persons one or both of whom reside in the state, without the license required in Alabama or a license from the state in which the marriage is celebrated, a similar penalty (4890).

**c. Form of ceremony.**—No provision except that Mennonites, Quakers or similar Christian societies may solemnize according to their forms upon the consent of the parties published and declared before the congregation assembled for public worship (4883).

**d. Other requirements and prohibitions.**—Celebrants are subject to penalties for knowingly solemnizing the following prohibited marriages: miscegenetic, a fine of from \$100 to \$1,000, which may be accompanied by imprisonment for six months (7422); incestuous, a fine of not less than \$1,000 (7391); of persons under the age of "legal consent," a fine of not less than \$1,000 (7391).

### 5. THE MARRIAGE RECORD

**a. Certificates and their distribution.**—All persons or religious societies solemnizing marriage must within one month certify the fact in writing to the judge of probate, setting forth the names of the parties and the time and place of the celebration (4887). **Penalty.**—Violator is guilty of a misdemeanor (7392).

**b. Local record.**—The certificate must be recorded in the book kept for the registry of license (4887). **Penalty.**—One who fails to record it within five days after its return is guilty of a misdemeanor (7390).

**c. State record.**—The judge of probate must report monthly to the state board of health all marriages that have occurred in his county for the preceding month, and furnish such information in regard to each marriage as is on record in his office (730).

### 6. INTER-STATE RELATIONS

No provision.

### 7. CERTAIN OTHER PROHIBITIONS

**Marriage between a white person and a negro or descendant of a negro to the third generation inclusive** (7421).

**It is a criminal offense to take a girl under fourteen away from her parents for the purpose of marriage** (6211).

**No marriage shall be entered into in any manner whatsoever without the male party shall have first submitted to the antenuptial examination referred to in 3h and having obtained a certificate from such physician of his freedom from said diseases** (Acts of 1919, No. 178).

## LAWS BY STATES

### ARIZONA

**Authorities.**—Revised Statutes of 1913; Civil and Penal Codes (references are to sections of the Civil Code unless otherwise specified); Laws through the special session of 1918.

#### 1. COMMON LAW MARRIAGES

Such marriages are not recognized. Marriages contracted without a license and solemnization are invalid (3844).

#### 2. MARRIAGEABLE AGE

Males, 18; females, 16. Persons under these ages shall not marry, but a person may be married under the specified age, if he or she is the prospective parent of a child, and if parental consent is had, and also the approval of the judge of the superior court, and if the parties are not forbidden to marry by laws relating to miscegenation. (Acts, 1919, No. 18.)

#### 3. THE MARRIAGE LICENSE

- a. Requirement.—No marriage shall be solemnized without a license (3833).
- b. Where obtained.—From the clerk of the superior court in the county in which one of the parties resides, or in which the marriage is to take place (3833). From the superintendent or agent of an Indian school or agency (See Laws, 1915, p. 50). Penalty.—The latter issuer, for failure to report and transmit the legal fee to the clerk upon issuance of a license or for using his authority for his personal gain, is subject to imprisonment for not over six months or a fine of from \$50 to \$300, or both (S. L., 1915, p. 50).
- c. Advance notice, objections, etc.—No provision.
- d. Parental consent.—Required in writing for males under 21 and females under 18 (3835). Penalty.—For issuing a license in violation of this provision, the issuer is subject to a fine of from \$10 to \$100, or imprisonment for not over 60 days, or both (3842).
- e. Form of license.—It authorizes the marriage by a qualified person (3834).
- f. Record of license.—Required (3836).
- g. Life of license.—No provision.

#### 4. SOLEMNIZATION

- a. The celebrant.—Judges of courts of record; justices of the peace of the several counties (3830–3831); the superintendent or agent of an Indian school or agency (Laws, 1915, p. 50); any regularly licensed or ordained clergyman, including all persons who by the customs, rules, and regulations of any religious society are permitted to solemnize or officiate at marriage ceremonies (3830–3831).
- b. Presentation of license.—It is a misdemeanor to solemnize a marriage without a license (P. C. 362).
- c. Form of ceremony.—There must be at least two witnesses of lawful age besides the celebrant (3843).
- d. Other requirements and prohibitions.—For taking part in the marriage of a male under 21 or a female under 18 without parental consent in writing, or for sanctioning such a marriage by his presence, or by the issuance of a certificate, the celebrant is subject to a fine of from \$50 to \$300, or imprisonment for not over six months, or both (3841).

#### 5. THE MARRIAGE RECORD

- a. Certificates and their distribution.—The celebrant must endorse the fact of solemnization on the license and return it to the clerk of the superior court

## AMERICAN MARRIAGE LAWS

within 20 days after solemnization (3836). **Penalties.**—For failure to make return, a fine of from \$10 to \$100, or imprisonment not over 60 days, or both (3842). Failure to make return within 30 days, or the making of a false return, is a misdemeanor (P. C. 362).

b. **Local record.**—The return is to be recorded by the clerk (3836). **Penalty.**—Wilfully making a false record is a misdemeanor (362 P. C.).

c. **State record.**—No provision.

### 6. INTER-STATE RELATIONS

Marriages solemnized elsewhere by persons intending at the time to reside in Arizona shall have the same legal consequences as if solemnized there, and persons residing in Arizona "can not evade" any of the provisions of its laws as to marriage by going elsewhere for the solemnization (3839).

### 7. CERTAIN OTHER PROHIBITIONS

All marriages of persons of Caucasian blood or their descendants with negroes, Mongolians or Indians or their descendants are null and void (3837).

## ARKANSAS

**Authorities.**—Digest of Statutes of 1916 by Kirby and Castle (references are to its sections); Laws through 1917.

### 1. COMMON LAW MARRIAGES

Such marriages have been declared invalid by the courts (*Furth v. Furth*, 97 Arkansas 272), but if such a marriage is entered into in a state which recognizes its validity, it will be recognized as valid in Arkansas (*Evatt v. Miller*, 114 Arkansas 84; *Estes v. Merrill*, 121 Arkansas 361).

### 2. MARRIAGEABLE AGE

Males, 17; females, 14 (6082). The marriage of a person under the marriageable age is, however, only voidable (6086). See also *Henderson v. Ressor*, 178 S.W. 175, 265 Mo. 718 and *Mobbs v. Millard*, 106 Arkansas 563.

### 3. THE MARRIAGE LICENSE

a. **Requirement.**—All persons contracting marriage are required to first obtain a license (6106).

b. **Where obtained.**—From the clerk of the county court of any county (6106); also from the clerks of the probate courts in counties having two judicial districts (6108).

Both parties must appear.

c. **Advance notice, objections, etc.**—No provision.

d. **Parental consent.**—Required for all under the "lawful age" (6111), i. e., the age of majority. In Arkansas this is 21 for males and 18 for females (4154). The applicant may introduce the parent or guardian of either party, or a certificate, duly attested, from the parent or guardian to prove that the parties are of lawful age, and in case they are not, there must be satisfactory evidence of consent, either verbal or written. The issuer may require the applicant to make affidavit to the genuineness of the consent or to the correctness of the ages given, this affidavit to be open to public inspection (6111).

e. **Form of license.**—It contains the names of the parties (6109).

f. **Record of license.**—No direct provision, but a recording is provided for in effect through the requirement of a bond, as shown under 3h.



## LAWS BY STATES

g. **Life of license.**—60 days. It must be returned within that time, duly executed; otherwise, the applicant is liable for the amount of his bond (6112).

h. **Other requirements and prohibitions.**—The applicant must enter into bond in the penal sum of \$100, conditioned that the parties have a lawful right to the license and that they will faithfully carry into effect the provisions thereof. This bond becomes void on return of the license, executed by an authorized celebrant (6110).

**Penalties.**—For issuing a license contrary to law, a fine of from \$100 to \$500 (6114). Whoever shall apply for a license to marry without first obtaining the consent of the other party shall be fined from \$10 to \$100, and is also liable to the party injured in a suit for damages (6113).

### 4. SOLEMNIZATION

a. **The celebrant.**—The governor of the state, any judge of a court of record within the state, a justice of the peace within his county (6091); a regularly ordained minister or priest of any religious sect or denomination (6091) after recording his credentials and obtaining a certificate as provided (6092); religious societies to which the parties belong which reject formal ceremonies (6100). **Penalties.**—For failure by a clerk or recorder to record properly the credentials of a religious celebrant, a fine of not over \$100 on motion of the party aggrieved (6103). Ministers or other persons purporting themselves to be such are subject to a fine of not less than \$100 for violating any of the provisions relating to the credentials for solemnizing marriage and the celebrant's own license (6094).

b. **Presentation of license.**—No specific provision. But presentation is indirectly required through the requirement and penalty shown under 5a below.

c. **Form of ceremony.**—The customs of the particular church or society when solemnized by ministers or religious societies. Such forms shall be observed by a civil officer as he shall deem most appropriate (6099-6100).

d. **Other requirements and prohibitions.**—It is a misdemeanor to solemnize an incestuous marriage (6090). In another section (6115) a penalty of from \$100 to \$500 is established for violation of any of the provisions of the law relating to such marriages.

### 5. THE MARRIAGE RECORD

a. **Certificates and their distribution.**—The celebrant, or officer of the religious society, must execute and sign the license (6109), and if a minister must state when and where his credentials are recorded (6092). The contracting parties are required to return the executed license to the issuer (6112) who after recording it shall attach a certificate of his record to the license and return the same to the party presenting it (6116). **Penalties.**—For failure by the celebrant to sign and return the license to the contracting parties at the time of marriage, a fine of from \$100 to \$500 (6115). For wilfully making a false return, the celebrant shall be fined not less than \$100 (6117).

b. **Local record.**—The return is to be recorded in the clerk's office (6116). **Penalty.**—For wilfully making a false record, a fine of not less than \$100 (6117).

c. **State record.**—The county and probate clerks must report monthly to the state registrar of vital statistics (Laws, 1917, p. 802).

### 6. INTER-STATE RELATIONS

Marriages valid by the laws of the state or country in which they took place and in which the parties actually resided, are valid in Arkansas (6068).

### 7. CERTAIN OTHER PROHIBITIONS

The marriage of white persons with negroes or mulattoes (6084); also any marriage with a person under the marriageable age (6082).

## AMERICAN MARRIAGE LAWS

### CALIFORNIA

**Authorities.**—Deering's Code of 1915, Civil, Penal and Political; Laws through 1917. References are to sections of the Civil Code unless otherwise specified.

#### 1. COMMON LAW MARRIAGES

Such marriages are not recognized. Consent alone will not constitute marriage; it must be followed by a solemnization authorized by the code (55).

#### 2. MARRIAGEABLE AGE

Males, 18; females, 15 (56).

#### 3. THE MARRIAGE LICENSE

a. **Requirement.**—All persons about to be joined in marriage must obtain a license therefor (69). Unmarried persons, not minors, who have been living together as husband and wife may be married without a license by a clergyman (79).

b. **Where obtained.**—From the county clerk of the county in which the marriage is to be celebrated (69).

c. **Advance notice, objections, etc.**—No provision.

d. **Parental consent.**—Required for males under 21 and females under 18, unless previously married. It must be given in writing, duly verified (69). When marriages of males under 18 or females under 15 are contracted without parental consent, they may be annulled on suit of the non-aged party within four years after arriving at the marriageable age unless subsequently recognized, or on suit of the parent during non-age (83).

e. **Form of license.**—The license must show the identity of the parties, their real and full names and places of residence, their ages and whether white, mongolian, negro or mulatto (69).

f. **Record of license.**—No provision.

g. **Life of license.**—No provision.

h. **Other requirements and prohibitions.**—The clerk may examine the male applicant on oath for all the facts required to be stated in the license—which examination shall be reduced to writing (69). No license may be issued for the marriage of a white person with a negro, mulatto or mongolian (69), or when either party is imbecile or insane or when applying is under the influence of any intoxicating liquor or a narcotic drug.

Besides the license a certificate of registry, filled out in the presence of the county clerk, must be obtained showing the race, color, age, names, birthplace, residence and parentage of each party, whether previously married and if so, the manner of dissolution (69a).

#### 4. SOLEMNIZATION

a. **The celebrant.**—A justice of the supreme court, a justice of the district court of appeal, a judge of the superior court, a justice of the peace, a judge of any police court, a city recorder (70); a priest or minister of the gospel of any denomination (70); certain religious denominations according to their forms (79a).

b. **Presentation of license.**—Required. **Penalty.**—A celebrant who solemnizes a marriage without first being presented with the license is subject to a fine of from \$100 to \$1,000 or imprisonment for three months to one year, or both (360 Penal Code).

The certificate of registry (see 3h) must also be presented (69a).

c. **Form of ceremony.**—The parties must declare in the presence of the celebrant that they take each other as husband and wife (71). Marriage of members of

## LAWS BY STATES

any particular religious denomination having as such a peculiar form of entering the marriage relation may be solemnized in that manner but the parties must make a declaration showing their names, ages, residence and the fact of marriage which must be signed and sealed in the presence of witnesses and acknowledged and recorded as in grants of real property (79a). If no record of the solemnization of a marriage is known to exist, the parties may make the same declaration (76).

d. Other requirements and prohibitions.—If the celebrant has any reason to doubt the correctness of the statements in the marriage license he must satisfy himself thereof, and for that purpose is authorized to administer oaths (72). Any celebrant who knowingly solemnizes an incestuous or other marriage forbidden by law is liable to a similar penalty (359 Penal Code).

### 5. THE MARRIAGE RECORD

a. Certificates and their distribution.—The celebrant must endorse upon or attach to the license a certificate showing the time and place of solemnization, and the name and place of residence of one or more witnesses to the ceremony (73). He must, at the request of, and for either party, make a certified copy of the license and certificate and file the original with the county recorder within 30 days (74); he must also file the certificate of registry (see 3h above) with the recorder within three days after the ceremony (69a; 3076 Pol. C.). Penalty.—For failure to file the marriage certificate within the specified time or for making a false return, a fine of from \$100 to \$1,000 or imprisonment from three months to one year, or both. For failure by the husband to put on record a marriage solemnized by declaration a similar penalty (79a).

b. Local record.—The county recorder must record the license and certificate when returned (4131 Pol. C.). He is also required to make an accurate copy of each certificate of registry returned to him, to be permanently preserved in his office (3078 Pol. C.). Penalty.—For making a false record, a fine of from \$100 to \$1,000 or three months to one year imprisonment, or both (360 Penal Code).

When unmarried persons, not minors, who have been living together shall have been married by a clergyman without a license, he shall record the marriage upon the records of his church (79).

c. State record.—Each month the county recorder must file all original certificates of registry received by him with the state registrar of vital statistics (3078-80 Pol. C.). Penalty.—Any person who fails to perform any duty imposed on him under the chapter on registration is guilty of a misdemeanor (3082 Pol. C.).

### 6. INTER-STATE RELATIONS

Out of state marriages are valid if valid by the laws of the country in which they were contracted (63).

### 7. CERTAIN OTHER PROHIBITIONS

The marriage of a white person with a negro, mulatto, or mongolian (60).

## COLORADO

Authorities.—Mill's Annotated Statutes 1912 (references are to its sections); Laws through 1917.

### 1. COMMON LAW MARRIAGES

Such marriages are recognized (Israel v. Arthur, 18 Colo. 158).

### 2. MARRIAGEABLE AGE

No provision.

## AMERICAN MARRIAGE LAWS

### 3. THE MARRIAGE LICENSE

a. **Requirement.**—"The county clerk shall have authority to issue a marriage license to any person applying for the same." Any celebrant "to whom such license duly issued may come \* \* \* may lawfully solemnize matrimony" (4732).

b. **Where obtained.**—From the county clerk of any county (4732).

c. **Advance notice, objections, etc.**—No provision.

d. **Parental consent.**—Required for males under 21 and females under 18 (4738). There is no provision as to form.

e. **Form of license.**—It must show the applicants' names, residences, previous marriages, if any, and the manner of their dissolution with grounds for divorce if there was one (4732).

f. **Record of license.**—No provision other than the affidavit called for in 3h.

g. **Life of license.**—No provision.

h. **Other requirements and prohibitions.**—If the clerk has no personal knowledge of the competency of the parties, he shall take the affidavit in writing of the applicant and such other testimony as he may see proper. **Penalties.**—For issuing a license to persons not legally competent to marry, without taking the required testimony, a fine of \$100 (4734). Any one who swears falsely in regard to any fact as to competency shall be deemed guilty of perjury (4735).

### 4. SOLEMNIZATION

a. **The celebrant.**—Any judge or justice of the peace, clergyman, or licensed preacher of the gospel (4736).

b. **Presentation of license.**—Required. **Penalty.**—A celebrant who solemnizes a marriage without a license is subject to a fine of from \$50 to \$200 (4740-41).

c. **Form of ceremony.**—No provision, but the certificate provides for witnesses (4733).

d. **Other requirements and prohibitions.**—The license is sufficient authority to the celebrant provided he has no personal knowledge of the incompetency of the parties. **Penalty.**—For solemnizing a marriage knowing that either party is legally incompetent, a fine of from \$50 to \$200 (4740-41).

The marriage of minors shall not be solemnized without parental consent; in case there is no parent or guardian, the celebrant may use his judgment. **Penalty.**—For violation, a fine of not over \$500 (4738).

For solemnizing an incestuous or miscegenetic marriage a \$50 to \$500 fine, or three months to two years in prison, or both (4730).

### 5. THE MARRIAGE RECORD

a. **Certificates and their distribution.**—The license and certificate, duly executed by the celebrant, shall be returned by him to the issuer within 30 days from solemnization (4734). The form and content of the certificate are specified (4733). **Penalty.**—For failure to make return as required, a fine of from \$20 to \$50 (4733).

The celebrant shall keep a record of all marriages solemnized by him and within three months transmit a certificate of every marriage to the clerk of the county in which the marriage took place (4739). **Penalties.**—For failure to make this return, the celebrant shall forfeit \$100 (4739). For making a false return, a fine of not less than \$100 and imprisonment for not less than three months (4744).

b. **Local record.**—The clerk shall record all returns of marriages in a book to be kept for that purpose within one month after receiving them (4741). **Penalty.**—For failure to record the return within the required time, a forfeit of \$100 to be recovered with costs by any person who shall prosecute for them (4741).

The county clerk of each county shall keep on file every marriage license returned to him and shall record each marriage certificate so returned (4742).

## **LAWS BY STATES**

**Penalty.**—Any clerk making a false record is punishable by a fine of not less than \$100 and imprisonment for not less than three months (4744).

**c. State record.**—No provision.

### **6. INTER-STATE RELATIONS**

All marriages contracted without the state which are valid by the laws of the country in which they were contracted are valid in Colorado, but this shall not be construed to allow bigamy or polygamy (4731).

### **7. CERTAIN OTHER PROHIBITIONS**

Marriage between negroes or mulattoes and white persons (4729).

## **CONNECTICUT**

**Authorities.**—General Statutes, Revision of 1918 (references are to its sections).

### **1. COMMON LAW MARRIAGES**

Such marriages are apparently not recognized, but no decisions have been rendered bearing directly on the point.

### **2. MARRIAGEABLE AGE**

No statutory provision establishing an absolute minimum age, but if either party applying for a license is under 16 years of age it is necessary to have the consent of a selectman of the town endorsed upon the license (5263).

### **3. THE MARRIAGE LICENSE**

**a. Requirement.**—No person shall be married until a license has been issued (5263).

**b. Where obtained.**—From the registrar of births, marriages and deaths of the town in which the marriage is to be celebrated (5263). The town clerk is ex-officio registrar (321).

**c. Advance notice, objections, etc.**—If neither party is a resident of the town in which the marriage is to be celebrated the license must not be issued until five days after the application, unless the probate judge or the celebrant renders a written decision that in his opinion public policy or the physical condition of one of the parties requires immediate solemnization. This shall be filed as a public document (5263). **Penalty.**—For violation by the registrar a fine of not more than \$100 (5263).

**d. Parental consent.**—Required for minors, i. e., those of both sexes below 21 years (5263). Consent must be given in writing. In the case of a minor who has no parent or guardian residing in the United States the consent of the first selectman of the town where such minor has last resided for the period of six months is sufficient (5263). Any person under the control of a guardian or conservator must file the written consent of such guardian or conservator, and unless this provision is complied with no person shall acquire any rights by marriage in the property of another who was at the time of the marriage under such guardianship. **Penalty.**—For knowingly issuing a license without the consent required, a fine of not more than \$100 (5263).

**e. Form of license.**—It states that the parties named have complied with the provisions (5263).

**f. Record of license.**—No provision. But the form of license established by the state board of health, under section 2375, provides for a stub on which a record may be kept.

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g. **Life of license.**—No provision.

h. **Other requirements and prohibitions.**—One of the parties, under oath, shall inform the registrar as to the name, age, color, occupation, birthplace, residence and condition—i. e., whether widowed, single or divorced or under the supervision of a guardian or conservator—of each party (5263).

### 4. SOLEMNIZATION

a. **The celebrant.**—A judge or justice of the peace; an ordained or licensed clergyman resident in any state who continues in the work of the ministry; or a religious denomination according to its usages. No public official shall celebrate a marriage on authority of a license issued by himself or his assistant (5267). **Penalties.**—For solemnizing marriage when knowingly not authorized to do so the celebrant is subject to a fine of not over \$500, or imprisonment for not more than one year, or both (6431).<sup>1</sup> A public official who celebrates a marriage under authority of a license issued by himself shall be fined not more than \$50 (5267).

b. **Presentation of license.**—For solemnizing without it the celebrant is subject to a fine of not over \$100 (5263).

c. **Form of ceremony.**—No provision.

### 5. THE MARRIAGE RECORD

a. **Certificates and their distribution.**—The celebrant must certify upon the license the fact, time and place of marriage, and return it to the issuer before or during the first week of the month next succeeding the marriage (5265). In the case of marriages in a foreign country the parties who are citizens of this state are responsible for the return of the license and certificate (5264). **Penalties.**—For failure by the celebrant to make return, a fine of not over \$10 (5265). For failure by a person marrying in a foreign country to make return, a fine of \$100 (5264).

b. **Local record.**—All returns shall be recorded by the registrar within 60 days (2377). When it appears that either party was a resident of some other town in the state, the registrar shall transmit a certified copy of the certificate to the registrar of such town (325). It is further provided that the registrar shall ascertain as accurately as he can all marriages occurring in his town (324). **Penalties.**—For knowingly making false entries, not over \$50, or imprisonment not over three months, or both (327). Any person violating any provision of this chapter for which no specific penalty is provided is subject to a fine of from \$7 to \$25 (338).

c. **State record.**—The registrar shall transmit monthly to the superintendent of vital statistics an attested copy of every certificate of marriage received by him (324). The registrar to whom the duplicate referred to in 5b is sent shall not report it to the superintendent (325). **Penalty.**—See 5b.

d. **Penalties not shown above.**—Any person who shall knowingly publish a false notice of any marriage shall be fined not more than \$100, or imprisoned not more than six months (6211).

### 6. INTER-STATE RELATIONS

There is no provision as to marriages in another state. The marriage of a citizen of Connecticut in a foreign country in conformity with the laws of that country shall be valid provided each party would have had legal capacity to contract such a marriage in Connecticut, and there are special provisions for such marriages (5264).

<sup>1</sup> There are conflicting penalty clauses. Two lawyers in Connecticut agree that this is apparently the prescribed penalty. Another Connecticut lawyer holds that apparently a \$50 penalty applies, as prescribed in Acts, 1917, p. 2299.

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### 7. CERTAIN OTHER PROHIBITIONS

The marriage of an imbecile, epileptic or feeble-minded person unless the woman is over 45 years of age. Penalties.—Any person contracting such a marriage is subject to imprisonment for not more than three years (6428). Any one who assists in procuring such a marriage is subject to a fine of not over \$1,000, or five years imprisonment, or both (6429).

## DELAWARE

Authorities.—Revised Code of 1915 (references are to its sections); Laws through 1917.

### 1. COMMON LAW MARRIAGES

The status of such marriages is not established. A marriage is not invalid through failure to take out a license (3000), but there is no statutory provision regarding the necessity of a marriage ceremony and the question has never been finally passed upon by the courts. A correspondent writes: "Our courts recognize common law marriages, valid by the laws of other states, where the parties contracted such marriage in such foreign state, and have held that a common law wife is entitled to protection of the statute which imposes a penalty for wife beating. In a recent case in Kent County, the Court expressly declined to pass upon the question of whether a common law marriage was valid in Delaware or not, and the Industrial Accident Board has recently held that a common law wife is not entitled to the benefits of the Workmen's Compensation Act. It is curious that the question seems to be as yet undecided, but I think the better opinion is that a common law marriage contracted in this State is not valid."

### 2. MARRIAGEABLE AGE

No specific provision, but if the male is under 18 or the female under 16 and the marriage is not confirmed after reaching that age, the non-aged party may obtain a divorce (3006).

### 3. THE MARRIAGE LICENSE

a. Requirement.—Persons intending to be married must first obtain a license (2995).

b. Where obtained.—From the clerk of the peace of the several counties; from justices of the peace provided neither party is a resident of the state (2995).

c. Advance notice, objections, etc.—Advance notice is not required but the license must be obtained by residents of the state at least 24 hours before the marriage is performed, and when both parties are non-residents, at least 96 hours before (2994). For penalties see 3h.

d. Parental consent.—Required for males under 21 and females under 18. The consent must be certified under seal, in the presence of two reputable witnesses (2998).

e. Form of license.—It must show the names and residence of the parties.

f. Record of license.—The facts ascertained must be recorded and subscribed to by the parties. This record must be kept open to public inspection (2997).

g. Life of license.—No provision.

h. Other requirements and prohibitions.—When both parties are non-residents of the state the clerk must examine them under oath as to their names, residence, occupation, age, color, relationship if any, whether they have been previously married, and the names and residence of their parents, and the license shall be issued only after it has been made to appear that no legal impediment exists.

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Where one or both parties are residents of the state only one need be examined and the answers need not be made under oath unless the issuer deems it necessary. If neither party is personally known to the issuer as a resident of the state he or she must be identified as such (2997). A license must not be issued when either party is under the influence of a narcotic drug or intoxicating liquor or is an imbecile, epileptic or of unsound mind or is or has been an inmate of an insane asylum unless it appears that such person has been satisfactorily discharged from such asylum (2995).

**Penalties.**—Any applicant swearing falsely is guilty of perjury (2999). An issuer who grants a license for an incestuous or miscegenetic marriage or for the marriage of a pauper or person of unsound mind, or who knowingly commits any violation of any of the provisions of the chapter on marriage shall be fined \$100 and in default of payment imprisoned not over 30 days (2992; 2995).

### 4. SOLEMNIZATION

**a. The celebrant.**—The mayor of the city of Wilmington; any ordained minister of the gospel and every minister in charge of a recognized church; certain religious societies to which either of the parties belong. **Penalty.**—For solemnizing marriage when not authorized by law to do so, a fine of \$100 and in default of payment imprisonment for not over 30 days (2993).

All celebrants must register with the state registrar and must report the fact of removal to another place within 30 days (2993; 817). **Penalty.**—For failure to do so a fine of from \$5 to \$10 (817).

**b. Presentation of license.**—For solemnizing without a marriage license the celebrant or religious society is subject to imprisonment for not over six months, or a fine of not over \$500, or both (3000).

**c. Form of ceremony.**—No provision.

**d. Other requirements and prohibitions.**—The celebrant is further subject to penalties as follows: For knowingly solemnizing an incestuous or miscegenetic marriage or the marriage of a pauper or a person of unsound mind, a fine of \$100 and in default of payment, imprisonment not exceeding 30 days (2992).

For solemnizing a marriage prior to the expiration of 96 hours from the time of issuance, when both parties are non-residents; or 24 hours, when one or both are residents of the state, imprisonment not over six months or a fine of not over \$500, or both. This applies also to religious societies (3000).

**e. Penalties not shown above.**—Any person who knowingly assists in contracting an incestuous or miscegenetic marriage, the marriage of a pauper or a person of unsound mind shall be fined \$100 and in default of payment imprisoned not over 30 days (2992). If any pauper supported in the almshouse or county hospital shall marry he shall be dismissed, and if the overseer consents to such marriage he shall be removed. If any minister knowingly solemnizes such marriage he shall be fined \$50 (1459). There is a more severe penalty shown under 4d.

### 5. THE MARRIAGE RECORD

**a. Certificates and their distribution.**—A certificate must be returned to the issuer by the celebrant or officer of the religious society (2996). The celebrant is further required to make a return, giving detailed information, on or before the tenth day of the following month to the local registrar of the district in which the marriage occurred (815; Laws 1915, p. 149). **Penalties.**—For failure to make return to the issuer within four days the celebrant is subject to a fine of \$25 (2996). For making a false return, \$100 (3000). See also penalties under 5c.

**b. The local record.**—The date of marriage and the name of the celebrant must be entered by the clerk in the marriage record book (2996). The local registrar shall make three copies of each marriage certificate returned to him—one for himself, one for the state registrar and one for the county recorder (803). He shall file his own copies and make quarterly returns to the recorders, and the



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files of the latter shall be accessible at all times to physicians, clergymen and lawyers without charge (804).

c. **State record.**—Within 24 hours the issuer must notify the state registrar of each license issued (816). There is a special provision regarding New Castle County (2996). Within 24 hours after the marriage the celebrant must report it to the state registrar, this report in no way to relieve him of the responsibility for filing a certificate with the local registrar (814). The certificates filed with the local registrar are to be returned by him quarterly to the state registrar and permanently bound and preserved (802; 804). **Penalties.**—For failure by the celebrant to comply with the provision relating to return to the local and state registrar a fine of from \$5 to \$25 (818). Whoever shall violate any of the provisions of the chapter on state registration shall be fined from \$5 to \$100 (806). For failure by the local registrar to perform any of the duties imposed upon him, he shall be fined from \$10 to \$100, or imprisoned not over 50 days, or both (806); for failure to make prompt returns he shall be removed from office in addition to any other penalties (800).

### 6. INTER-STATE RELATIONS

If a marriage within the prohibited degrees, or of a white person with a negro or mulatto, or of a pauper or person of unsound mind, is contracted outside of the state and the parties afterwards live together within the state, they shall be punished in the same manner as if the marriage had been contracted in Delaware (2992).

### 7. CERTAIN OTHER PROHIBITIONS

Marriage between whites and negroes or mulattoes; between paupers; between a person of a sound mind and an idiot or insane person. These marriages are punishable (2992).

## DISTRICT OF COLUMBIA

**Authorities.**—Meyers' Code of 1911 (references are to its sections); Laws through 1917.

### 1. COMMON LAW MARRIAGES

Such marriages are probably valid. They have not been declared invalid by statute (*Travers v. Reinhardt*, 25 App. D. C. 567, and *Meister v. Moore*, 96 U. S. 76).

### 2. MARRIAGEABLE AGE

Males, 16; females, 14 (1285). Marriages below these ages are void from the time their nullity is declared by court. Suit may be brought by the parent or guardian, or by the person below the marriageable age through a next friend (1286).

### 3. THE MARRIAGE LICENSE

a. **Requirement.**—No one shall solemnize a marriage without having a license delivered to him (1290).

b. **Where obtained.**—From the clerk of the supreme court (1290).

c. **Advance notice, objections, etc.**—No provision.

d. **Parental consent.**—Required for males under 21 and females under 18. It must be given either personally to the clerk or in writing attested by a witness and proved to the satisfaction of the clerk (1292).

e. **Form of license.**—It must be addressed to the celebrant by name (1293).

f. **Record of license.**—Required (1295).

g. **Life of license.**—No provision.

h. **Other requirements and prohibitions.**—The issuer must examine the appli-

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cant under oath as to the applicants' names, ages, color, relationship, if any, whether previously married, and the names of their parents. Penalty.—False testimony is deemed perjury (1291).

### 4. SOLEMNIZATION

a. The celebrant.—A judge or justice of any court of record; a justice of the peace; a minister of the gospel, appointed or ordained according to the ceremonies of his church, resident anywhere in the United States or its territories who has been authorized by a justice of the supreme court of the District of Columbia to celebrate marriage; certain religious societies according to their customs (1288). Penalty.—Any one who undertakes to solemnize marriage when not authorized by law to do so is subject to a penalty of not more than \$500 (1289-90).

b. Presentation of license.—Required. It must be addressed to the celebrant by name. Penalty.—For not requiring it, a fine of not over \$500 (1290).

c. Form of ceremony.—No provision.

d. Other requirements and prohibitions.—None.

### 5. THE MARRIAGE RECORD

a. Certificates and their distribution.—The certificate executed by the celebrant must be returned to the issuer within 10 days (1293). Penalty.—For failure to make the required return, a fine of \$50 (1294).

b. Local record.—To be kept by the issuer of the license (1295).

### 6. INTER-STATE RELATIONS

If a person having and retaining a domicile in the District of Columbia, and forbidden by its laws to marry, contracts marriage in another jurisdiction, the marriage shall be deemed illegal and may be decreed to be void in the District in the same manner as if it had been celebrated therein (1287).

### 7. CERTAIN OTHER PROHIBITIONS

The marriage of an idiot or insane person (1285).

## FLORIDA

Authorities.—Compiled laws of 1914 (references are to its sections unless otherwise specified); Laws through 1915.

### 1. COMMON LAW MARRIAGES

Such marriages are recognized (*Caras v. Hendrix*, 62 Fla. 446).

### 2. MARRIAGEABLE AGE

No provision. But it is unlawful to contract a clandestine marriage with a girl under 16 years of age (3522). The common law ages control—14 for males and 12 for females (*Green v. Green*, 80 Sou. 739, Fla.).

### 3. THE MARRIAGE LICENSE

a. Requirement.—The celebrant must require the presentation of the license (2576).

b. Where obtained.—From the county judge of the county wherein the woman resides (2574).

c. Advance notice, objections, etc.—No provision.

d. Parental consent.—Required for any one under 21 unless previously married. The issuer must require satisfactory evidence (2574).

## LAWS BY STATES

- e. Form of license.—No special provision.
- f. Record of license.—Required (2577).
- g. Life of license.—No provision.
- h. Other requirements and prohibitions.—It is the duty of the issuer to grant a license if there appears to be no impediment to the marriage (2574). **Penalty.**—For knowingly issuing a license for a miscegenetic marriage a fine of \$1,000 (2581), imprisonment for not over two years or a fine of not over \$1,000 (3530).

### 4. SOLEMNIZATION

- a. The celebrant.—Any judicial officer or notary public of the state; any regularly ordained minister of the gospel in communion with some church (2575).
- b. Presentation of license.—Required (2576).
- c. Form of ceremony.—No provision.
- d. Other requirements and prohibitions.—The celebrant is subject to a fine of \$1,000 for solemnizing a miscegenetic marriage (2582); to imprisonment of not over one year or a fine of not over \$1,000 (3531).

### 5. THE MARRIAGE RECORD

- a. Certificates and their distribution.—The celebrant must, within 10 days, make a certificate of the marriage on the license and return the latter to the issuer (2576).
- b. Local record.—The name of celebrant and date of marriage must be entered on the marriage license record and the license and certificate filed (2577).
- c. State record.—No provision though the state board of health is authorized to compile "statistics" of marriages (1144).

### 6. INTER-STATE RELATIONS

No provision.

### 7. CERTAIN OTHER PROHIBITIONS

Marriage between a white person and a person of one-eighth or more negro blood (2579).

## GEORGIA

**Authorities.**—Park's Code of 1914 (references are to sections of the civil code unless otherwise specified); Supplement of 1917; Laws of 1918.

### 1. COMMON LAW MARRIAGES

Such marriages are recognized (Drawdy v. Hesters, 130 Ga. 168; Smith v. Smith, 84 Ga. 440; Clark v. Cassidy, 64 Ga. 662).

### 2. MARRIAGEABLE AGE

Males, 17; females, 14 (2931). Such marriages may be ratified after arriving at the prescribed age (84 Ga. 440).

### 3. THE MARRIAGE LICENSE

- a. Requirement.—The celebrant must require presentation of the license. But publication of banns may take the place of a license (2939).
- b. Where obtained.—From the ordinary of the county where the female resides, if resident in the state (2936). No provision if she is non-resident. **Penalty.**—For knowingly issuing a license for the marriage of a female domiciled in another county, a forfeit of \$500 (2938).

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- c. Advance notice, objections, etc.—No provision.
- d. Parental consent.—Required for females under 18. The issuer must inquire as to the ages of the applicants, and if there is any ground for suspicion that the female is under 18 years must refuse to grant the license without parental consent in writing (2938). Penalty.—For violation, a forfeit of \$500 for each offense (2938).
- e. Form of license.—It authorizes the marriage (2936).
- f. Record of license.—Required (2936).
- g. Life of license.—No provision.
- h. Other requirements and prohibitions.—Knowingly issuing a license for a miscegenetic marriage is a misdemeanor (678, Penal Code).

### 4. SOLEMNIZATION

- a. The celebrant.—A judge or justice of the peace; a minister of the gospel (2936); any Jewish minister or other person of any religious society authorized by the rules thereof to perform the marriage ceremony (2940); an ordained colored minister of the gospel between persons of African descent only (2179).
- b. Presentation of license.—Required. Penalty.—For solemnizing without a license or the publication of banns, the celebrant shall forfeit \$500 (2939).
- c. Form of ceremony.—No provision.
- d. Other requirements and prohibitions.—Knowingly solemnizing a miscegenetic marriage or the marriage of an idiot, lunatic or any person subject to any other disability which would render the marriage contract illegal is a misdemeanor (677-678, Penal Code).

### 5. THE MARRIAGE RECORD

- a. Certificates and their distribution.—The celebrant must return the license to the issuer together with his certificate (2936; 2940). In the case of a marriage preceded by publication of banns, the celebrant shall certify the fact to the ordinary of the county where the banns were published (2937).
- b. Local record.—The certificate is to be recorded by the issuer of the license (2936); also the certification of a marriage preceded by the publication of banns (2937).
- c. State record.—No provision.

### 6. INTER-STATE RELATIONS

All marriages contracted in another state by persons intending to reside in Georgia shall have the same legal effect as if solemnized in Georgia. Residents of the state "cannot evade" its laws by marrying elsewhere (2943).

### 7. CERTAIN OTHER PROHIBITIONS

Marriages between white persons and negroes are prohibited and void (2941). To be able to contract marriage, a person must be of sound mind (2931).

## IDAHO

**Authorities.**—Revised Code of 1908 (references are to its sections unless otherwise indicated); Laws through 1917.

### 1. COMMON LAW MARRIAGES

Such marriages are recognized (2611).

### 2. MARRIAGEABLE AGE

No provision.

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### 3. THE MARRIAGE LICENSE

a. Requirement.—A celebrant is subject to a penalty for solemnizing a marriage without a license (2634).

b. Where obtained.—From the county recorder of any county in the state (2629).

c. Advance notice, objections, etc.—No provision.

d. Parental consent.—Parental consent is not required for the issuance of a license except under the general provision as to competency shown below in 3h. Marriages under 18, if without parental consent, may be annulled at the suit of a parent at any time before such minor has reached the prescribed age or at the suit of the minor within four years after arriving at such age, unless the marriage has been recognized since (2640-41).

e. Form of license.—It must give the names and addresses of the parties (2629).

f. Record of license.—No provision.

g. Life of license.—No provision.

h. Other requirements and prohibitions.—If the issuer does not know of his own knowledge that the parties are competent under the laws of the state to contract matrimony he shall take the affidavit in writing of the applicant and of other persons as he may see proper which shall be his warrant against any fine or forfeiture (2631). Penalties.—For issuing a license for the marriage of a person legally incompetent, a fine of \$100 (2631). Any person who swears falsely to any material fact as to competency is deemed guilty of perjury (2632).

### 4. SOLEMNIZATION

a. The celebrant.—A justice of the supreme court; district or probate judge; justice of the peace; mayor, or the governor (2622); a priest or minister of the gospel of any denomination (2622). Penalty.—Every person who undertakes to join others in marriage knowing that he is not authorized by law to do so is guilty of a misdemeanor (7092).

b. Presentation of license.—Required. Penalty.—For solemnizing a marriage without a license, a fine of from \$50 to \$200 (2634).

c. Form of ceremony.—The parties must declare in the presence of the celebrant that they take each other as husband and wife (2623).

d. Other requirements and prohibitions.—The celebrant must ascertain the identity of the parties, their real and full names, and places of residence, that they are of marriageable age, that parental consent has been given if either party is under 18 and not previously married and that there is no legal impediment (2621); and he may administer oaths and examine witnesses for the above facts (2624). Penalty.—For solemnizing a marriage with the knowledge that either party is legally incompetent, a fine of from \$50 to \$200 (2634).

### 5. THE MARRIAGE RECORD

a. Certificates and their distribution.—The license and certificate attached thereto, duly executed by the celebrant, shall be returned by him to the issuer within 30 days after solemnization (2630). Penalties.—For failure to make return, a fine of from \$20 to \$50 (2630). For wilfully making a false return, a fine of not less than \$100 and imprisonment for not less than three months (2638).

b. Local record.—The recorder must register each marriage return within one month after receiving it (2635). Penalties.—For failure to record within the specified time, a forfeit of \$100 (2635). For wilfully recording a false return, a fine of not less than \$100 and imprisonment for not less than three months (2638).

c. State record.—The county recorder must transmit every three months to the secretary of the state board of health a certified abstract of the register of marriages prepared in the manner prescribed by the secretary and upon blanks furnished by him (Sec. 1091, amended by the laws of 1911, p. 645).

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### 6. INTER-STATE RELATIONS

All marriages contracted without the state which would be valid by the laws of the country in which they were contracted are valid in Idaho (2619).

### 7. CERTAIN OTHER PROHIBITIONS

Marriage between whites and negroes or mulattoes (2616).

## ILLINOIS

**Authorities.**—Revised Statutes of 1915–1916 (references are to its chapters and sections).

### 1. COMMON LAW MARRIAGES

Such marriages are not recognized. They are null and void unless the parties subsequently contract a licensed and solemnized marriage (89:4).

### 2. MARRIAGEABLE AGE

Males, 18; females, 16 (89:3). A court will annul a marriage below these ages on the application of either of the parties before reaching the ages of consent, but if such annulment is not asked until after both parties have reached the ages respectively fixed by the statute, the marriage is binding (*Matthes v. Matthes*, 198 Ill. Appellate, 515).

### 3. THE MARRIAGE LICENSE

a. **Requirement.**—All persons intending to be joined in marriage shall obtain a license (89:6); but a license need not be obtained when intention to marry has been published, in the case of certain religious societies, by a week's notice to a standing committee of the society (89:15).

b. **Where obtained.**—From the county clerk of the county where the marriage is to take place (89:6).

c. **Advance notice, objections, etc.**—No provision.

d. **Parental consent.**—Required for males under 21 and females under 18. It must be given personally before the issuer. The parent must also make affidavit as to the age and place of birth and residence of the minor, and must give such other proof as the clerk may require (89:3). **Penalty.**—For false testimony as to age, a fine of from \$100 to \$1,000 or imprisonment for not more than one year or both (89:6). For issuing a license contrary to provisions, see 3h.

e. **Form of license.**—This must show names, ages and residence, and if either party is a minor, the fact of parental consent (89:7).

f. **Record of license.**—No provision.

g. **Life of license.**—No provision.

h. **Other requirements and prohibitions.**—For the purpose of ascertaining the age of the parties and the legality of the marriage the issuer shall obtain affidavits of one or both parties to the marriage and of any other person, and he may examine witnesses under oath (89:6; 8). **Penalties.**—For knowingly issuing a license for the marriage of persons who are legally incompetent to contract marriage, a fine of from \$100 to \$500 for each offense (89:13). Any one swearing falsely to any material matter in a required affidavit may be fined from \$100 to \$1,000, or imprisoned for not more than one year, or both (89:6).

Before issuing the license to a resident of another state the issuer shall satisfy himself by required affidavits or otherwise that such marriage is not prohibited by the laws of the state where the applicant resides (89:21). **Penalty.**—Issuing a license with the knowledge that the persons are thus prohibited from intermarrying is a misdemeanor (89:22).

## **LAWS BY STATES**

### **4. SOLEMNIZATION**

a. **The celebrant.**—A judge of any court of record; justice of the peace or superintendent of any public institution for the deaf and dumb; a minister of the gospel in regular standing; a Society of Friends (89:4); any religious society of which the parties are members according to its rules (89:5). **Penalty.**—For undertaking to solemnize marriage when not legally authorized to do so, a fine of not over \$500 and imprisonment from one day to two years (38:102½).

b. **Presentation of license.**—Required (89:16). **Penalty.**—A celebrant who solemnizes a marriage without a license is subject to a forfeit of \$100 (89:15). This does not apply in the case of Quakers.

c. **Form of ceremony.**—No provision except in the case of Quakers, who after giving a week's notice to a standing committee may appear in a public meeting or private gathering before official witnesses with a form of certificate to be signed by the contracting parties and official witnesses and to be publicly read by one of the witnessing parties and afterward duly recorded upon the records of an organized meeting of the society (89:4).

d. **Other requirements and prohibitions.**—It is a misdemeanor to solemnize the marriage of a non-resident who would be prohibited from contracting such marriage by the laws of his own jurisdiction (89:22).

### **5. THE MARRIAGE RECORD**

a. **Certificates and their distribution.**—The celebrant, or clerk of a religious society, shall within 30 days after solemnization make a certificate of the marriage and return it together with the license, if one has been issued, to the clerk of the county in which the marriage took place (89:9). **Penalty.**—For failure to make this return a forfeit of \$100 (89:16).

b. **Local record.**—The county clerk must register and preserve the certificate (89:11). **Penalty.**—For failure to register it within 30 days a forfeit of \$100 (89:14).

c. **State record.**—Required. The county clerks must report annually to the secretary of the state board of health (Hurd's Revised Statutes, 1917, Ch. 111½, Secs. 8 and 9).

### **6. INTER-STATE RELATIONS**

If a person who intends to remain a resident of Illinois, and who is forbidden by its laws to marry, contracts marriage elsewhere, the marriage is void in Illinois. If a person who intends to remain a resident of some other jurisdiction, and who is forbidden to marry by its laws, contracts marriage in Illinois, the marriage is void (89:19-25). **Penalties.**—See 3h and 4d.

### **7. CERTAIN OTHER PROHIBITIONS**

Insane persons and idiots are incapable of contracting marriage (89:2).

## **INDIANA**

**Authorities.**—Burns' Statutes of 1914 (references are to its sections unless otherwise specified); Supplement of 1918.

### **1. COMMON LAW MARRIAGES**

Such marriages are recognized. (*Teter v. Teter*, 101 Ind. 129; *Franklin v. Lee*, 30 Ind. App. 31).

### **2. MARRIAGEABLE AGE**

Males 18; females 16 (8357). Such marriages may be annulled on application of the incapable party (1060 and *Henneger v. Lomas*, 145 Ind. 287).

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### 3. THE MARRIAGE LICENSE

a. **Requirement.**—Before any persons, except members of the Society of Friends, shall be joined in marriage they shall produce a license (8362).

b. **Where obtained.**—From the clerk of the circuit court of the county in which the woman resides (8362).

c. **Advance notice, objections, etc.**—No requirement. Provision is, however, made for a hearing of applications in court, where the clerk feels it necessary to refuse to issue a license. Such hearing shall be without delay or expense to the applicants (8366).

d. **Parental consent.**—Required for males under 21 and females under 18. Where there is no parent resident in the state and the female has resided in the county where the license is sought to be obtained for one month preceding application, license may be issued without consent (8371). An affidavit of these facts made by some disinterested person is sufficient to justify the clerk in issuing the license (8372). **Penalty.**—See 3i.

e. **Form of license.**—It must state the names of the parties (8362).

f. **Record of license.**—Required and open to public inspection (8363).

g. **Life of license.**—No provision.

h. **Other requirements and prohibitions.**—The application must show the names, occupation, birthplace, residence and ages of the parties, whether the marriage is the first, second or other marriage, together with the names, residence, occupation and birthplace of their parents including the maiden name of the mother and such other facts as may be necessary to determine whether any legal impediment to the proposed marriage exists (8363). Members of the old Amish Mennonite Church instead of answering these questions under oath or affirmation may have the bishop of their congregation appear and sign a statement that the answers are true (Sup. 8363).

No license shall be issued when either of the contracting parties is an imbecile, epileptic, of unsound mind, or to any male person who has within five years been an inmate of any county asylum or home for indigent persons, unless it satisfactorily appears that the cause of such condition has been removed and that the applicant is able to support a family and likely to so continue; nor when either party is afflicted with a transmissible disease or at the time of making application is under the influence of intoxicating liquor or narcotic drugs (8365). **Penalty.**—Whoever procures the issuance of a license by any false statement, representation or pretense, shall be fined not over \$500 (8368). See also 3i.

i. **Penalties not shown above.**—For issuing a license contrary to the provisions the issuer shall be fined from \$25 to \$100 (8370). For issuing contrary to provisions, such sum as a jury may determine (8375).

### 4. SOLEMNIZATION

a. **The celebrant.**—A judge of a court of record; justice of the peace or mayor within their respective counties (8361); a minister of the gospel or priest of any church throughout the state; Friends and German Baptists according to the rules of their societies (8361). **Penalty.**—For solemnizing marriage without authority to do so, \$50 to \$500, to which may be added imprisonment for from 10 days to three months (2655).

b. **Presentation of license.**—Required (8362). **Penalty.**—For solemnizing without a license a fine of not over \$500 (8369).

c. **Form of ceremony.**—No provision.

d. **Other requirements and prohibitions.**—For solemnizing the marriage of persons forbidden by law to marry, the celebrant is subject to a fine of from \$50 to \$500, to which may be added imprisonment in the county jail for from 10 days to three months (2655); for solemnizing marriage contrary to the provisions, a fine of not over \$500 (8376).



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### 5. THE MARRIAGE RECORD

a. **Certificates and their distribution.**—The celebrant must report the marriage within three days to the issuer (7607). He must also within three months file a certificate in the clerk's office in the county in which the marriage was solemnized (8374). **Penalty.**—For failure to return license and certificate within three months, \$5 to \$100 (2656).

b. **Local record.**—The return is to be recorded together with the application (8363).

c. **State record.**—The clerks of the circuit courts shall make monthly reports to the county health commissioners (7607) who shall report to the State Board of Health (7608).

### 6. INTER-STATE RELATIONS

No provision, except that residents of the state are forbidden to marry out of the state in order to evade the provisions shown under 3h, and such marriages are declared void (8367).

### 7. CERTAIN OTHER PROHIBITIONS

Marriages between white persons and negroes; of an insane person or idiot (8360). Such marriages are void (1059; 8359).

## IOWA

**Authorities.**—Code of 1897 (references are to its sections unless otherwise specified); Wilcox's Supplement of 1913; Laws through 1917.

### 1. COMMON LAW MARRIAGES

Such marriages are recognized (Blanchard v. Lambert, 43 Iowa 228; McFarland v. McFarland, 51 Iowa 565).

### 2. MARRIAGEABLE AGE

No provision, but males above 16 and females above 14 may marry. Marriages under this age may be annulled on suit by the non-aged party (3140). This law, however, does not repeal the common law rule fixing the age of marriage consent at 14 for males and 12 for females. The statute is merely cumulative (Goodwin v. Thompson, 2 G. Gr. 329).

### 3. THE MARRIAGE LICENSE

a. **Requirement.**—For permission to solemnize a marriage, except in the case of members of certain denominations, a license for that purpose must be obtained (3148).

b. **Where obtained.**—From the clerk of the district court of the county where the marriage is to be solemnized (3141).

c. **Advance notice, objections, etc.**—No provision.

d. **Parental consent.**—Required for males under 21 and females under 18 (3143 and 3188). It must be in writing, acknowledged or proved to be genuine (3143). **Penalty.**—Issuing a license without parental consent is a misdemeanor (3144). Any one who makes a false certificate of parental consent is guilty of perjury (3143).

e. **Form of license.**—No provision.

f. **Record of license.**—Required (3142).

g. **Life of license.**—No provision.

h. **Other requirements and prohibitions.**—Unless the clerk is acquainted with

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the age and qualifications of the parties he must take the testimony of competent witnesses (3142). He is forbidden to issue a license when either party is disqualified from making any other civil contract or when the parties are under the marriageable age (3141).

### 4. SOLEMNIZATION

a. **The celebrant.**—A justice of the peace; judge of the supreme, district or superior court; mayor of the city or town wherein the marriage takes place; a minister of the gospel ordained or licensed according to the usages of his denomination (3145); any denomination having peculiar modes of entering the marriage relation (3148).

b. **Presentation of license.**—No provision.

c. **Form of ceremony.**—No provision.

d. **Other requirements and prohibitions.**—If a marriage is solemnized without parental consent where required, the parties marrying and all persons aiding them are guilty of a misdemeanor (3144).

Marriages solemnized with the consent of parties in any other form than prescribed are valid, but the parties and all persons aiding them shall forfeit the sum of \$50 each, but this shall not apply to the celebrant if within 15 days he makes the required return (Sup. 3147).

### 5. THE MARRIAGE RECORD

a. **Certificates and their distribution.**—The celebrant must file a certificate within 15 days with the clerk of the district court (3146). When the marriage is solemnized without a celebrant the certificate is to be filed by the husband (3149).

b. **Local record.**—The clerk must record all marriages (Sup. 2575-a16).

c. **State record.**—The clerk shall report annually to the state registrar "respecting such marriages" (Sup. 2575-a16). The state registrar writes that the issuing clerks furnish to him "transcripts of the records of marriage."

### 6. INTER-STATE RELATIONS

No provision.

## KANSAS

**Authorities.**—General Statutes of 1915 (references are to its sections unless otherwise specified); Laws through 1917.

### 1. COMMON LAW MARRIAGES

Such marriages are recognized, but those contracting them are subject to a fine or imprisonment (State v. Walker, 36 Kan. 297).

### 2. MARRIAGEABLE AGE

Males 15; females 12 (3609).

### 3. THE MARRIAGE LICENSE

a. **Requirement.**—A license is to be issued to any person legally entitled to it (6139). Friends are not required to obtain a license.

b. **Where obtained.**—From the probate judge (6139).

c. **Advance notice, objections, etc.**—No provision.

d. **Parental consent.**—Required for males under 21 and females under 18. It must be given in person or in writing duly attested (6139). The issuer may issue the license upon affidavit of the applicant or some responsible person for him that

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the parties are of lawful age. **Penalty.**—Any one swearing falsely to an affidavit that the parties are of age shall be fined not over \$500.

Males under 18 or females under 16 years of age must have, besides parental consent, the consent of the probate judge (6139).

e. **Form of license.**—The license authorizes the marriage of the persons named and shows the fact of parental consent, when required (6139).

f. **Record of license.**—Required (6147).

g. **Life of license.**—No provision.

h. **Other requirements and prohibitions.**—The applicant must make affidavit that the marriage is not within the prohibited degrees, and the issuer may examine the witnesses in his discretion. **Penalties.**—For failure to examine the applicants, as provided, the issuer is liable, in case the parties are not legally entitled to the license, to a fine of not over \$1,000 (6149). For knowingly issuing a license for an incestuous marriage, a fine of from \$100 to \$1,000, or imprisonment from three months to five years, or both, in the discretion of the jury (6136).

The issuer is forbidden to grant a license for the marriage of an epileptic, imbecile, feeble-minded or insane person unless the woman is over the age of 45 years (6157). **Penalty.**—A fine of not more than \$1,000, or imprisonment for not over three years, or both (6159).

**Further penalties.**—For refusing to issue a license to a person legally entitled thereto, a fine of not over \$1,000 (6148). For failure to comply with any of the provisions of the act, a fine of not more than \$100 (6145).

### 4. SOLEMNIZATION

a. **The celebrant.**—A judge or justice of the peace; a licensed minister of the gospel; the Society of Friends in the form in use in their meetings (6151).

b. **Presentation of license.**—Required. **Penalty.**—For solemnizing without a license the celebrant is subject to a fine of not over \$1,000 (6137).

c. **Form of ceremony.**—No provision.

d. **Other requirements and prohibitions.**—Celebrants are forbidden to solemnize the marriage of an epileptic, feeble-minded, imbecile or insane person unless the woman is over 45 years of age. **Penalty.**—For violation, a fine of not more than \$1,000, or imprisonment for not more than three years, or both (6158).

The celebrant, for knowingly solemnizing an incestuous marriage, is subject to a fine of from \$100 to \$1,000, or imprisonment from three months to five years, or both (6136).

For solemnizing a marriage where either party is under the age of legal consent, or with knowledge of any legal impediment, the celebrant shall be imprisoned not over one year, or fined not less than \$500, or both (3617).

### 5. THE MARRIAGE RECORD

a. **Certificates and their distribution.**—The celebrant shall, within 10 days, return the license with his certificate endorsed thereon to the issuer (Laws, 1917, p. 331). **Penalty.**—For failure to do so, a fine of not more than \$100 (6145).

b. **Local record.**—The return is to be recorded on the marriage record (Laws, 1917, p. 331). **Penalty.**—For failure to record it within 30 days, a fine of not over \$1,000 (6148).

c. **State record.**—The probate judge shall forward each month the licenses and certificates of marriage, together with a statement showing the names of the parties and the name and address of the celebrant to the state registrar (Laws, 1917, p. 331). **Penalty.**—For failure by the judge to comply "with any of the provisions of this Act," a fine of not more than \$100 (6145).

### 6. INTER-STATE RELATIONS

Marriages valid where contracted are valid in Kansas (6150), but this does not apply to bigamy (3610).

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### 7. CERTAIN OTHER PROHIBITIONS

The marriage is forbidden of a child born after the parent was insane, unless such insane parent shall have been discharged from the state hospital more than nine months before the birth of the child as cured and remained cured for the period of 20 years after such discharge (6155), but such persons may marry if the woman is over 45.

## KENTUCKY

**Authorities.**—Carroll's Statutes of 1915, Vols. 1 and 2 (references are to its sections unless otherwise specified); Vol. 3, containing Supplement of 1918.

### 1. COMMON LAW MARRIAGES

Such marriages are not recognized. "Marriage is prohibited and declared void . . . when not solemnized or contracted in the presence of an authorized person or society" (2097). There is an exception relating to antebellum marriages among negroes.

### 2. MARRIAGEABLE AGE

Males 14; females 12 (2097).

### 3. THE MARRIAGE LICENSE

a. **Requirement.**—No marriage shall be solemnized without a license (2105).

b. **Where obtained.**—From the clerk of the county in which the female resides at the time, but if she is of full age or a widow and it is issued on her application in person or in writing, the license may be obtained in any county (2105).

c. **Advance notice, objections, etc.**—No provision.

d. **Parental consent.**—Required for any one under 21 years of age unless previously married (2106). It must be given in person or in writing attested by two subscribing witnesses and proved by the oath of one of them before the clerk (2106). **Penalty.**—Any one falsely personating a parent or guardian shall be confined in the penitentiary for not over three years (2110).

The marriage of a male under 16 or a female under 14, when contracted without parental consent, may be declared void on suit of a next friend (2100).

e. **Form of license.**—It must show the age, residence, race, birthplace, parentage, and condition whether single, widowed or divorced of each party, the occupation of the husband, and the date and place of marriage.

f. **Record of license.**—No provision.

g. **Life of license.**—No provision.

h. **Other requirements and prohibitions.**—Where the parties are personally unknown to the clerk, bond must be given in the penalty of \$100, with condition that there is no lawful cause to obstruct the marriage (2106). **Penalties.**—For knowingly issuing a license for any prohibited marriage the clerk shall be fined from \$500 to \$1,000 and expelled from his office; for knowingly issuing a license "contrary to his duty as herein prescribed" a fine of not over \$1,000. If the license is issued by a deputy, he shall be fined \$1,000, and in case of a prohibited marriage shall be imprisoned for not more than one year, or both (2112).

### 4. SOLEMNIZATION

a. **The celebrant.**—A justice of the county court and such justices of the peace as the governor or the county court may authorize; a minister or priest in regular communion with any religious society after obtaining a license therefor from the county court in which he resides and giving bond as required; certain

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religious societies to which either party belongs which solemnize marriage by consent given in the presence of the society (2103-04). **Penalties.**—For solemnizing marriage when not authorized to do so, imprisonment in the penitentiary for not over three years (2110). For a breach of his license covenant a minister may be fined not exceeding \$2,000 (2104).

No person shall solicit marriage solemnizations for a celebrant for compensation, and no celebrant shall share his fee with such person. **Penalty.**—A fine of from \$10 to \$100 (2103).

b. **Presentation of license.**—For solemnizing a marriage without a license the celebrant is subject to imprisonment for from one to 12 months or a fine of not more than \$1,000, or both (2109).

c. **Form of ceremony.**—There must be at least two witnesses (2107).

d. **Other requirements and prohibitions.**—For solemnizing any prohibited marriage, the celebrant is subject to imprisonment for from one to 12 months, or a fine of not more than \$1,000, or both (2111).

### 5. THE MARRIAGE RECORD

a. **Certificates and their distribution.**—The celebrant must within three months return the license to the issuer with a certificate of the marriage (2107). **Penalty.**—For failure to make return, a fine of \$50.

b. **Local record.**—The license and certificate must be filed and recorded (2108).

c. **State record.**—No provision.

### 6. INTER-STATE RELATIONS

"Where persons resident in this commonwealth shall marry in another state, such marriage shall be valid here if valid in the state where solemnized" (2101). Bigamous and incestuous marriages are exceptions (*Dannelli v. Dannelli*, 4 Bush 51).

### 7. CERTAIN OTHER PROHIBITIONS

The marriage of white persons with negroes or mulattoes; of an idiot or lunatic (2096).

## LOUISIANA

**Authorities.**—Civil Code of 1870 (references are to its articles unless otherwise specified); Marr's Revised Statutes of 1915 (references are to its sections); Laws through 1918.

### 1. COMMON LAW MARRIAGES

Such marriages are not recognized. The law recognizes marriages only when they are contracted and solemnized according to the rules which it prescribes (88). See also *Johnson's Heirs v. Raphael*, 117 La. 967. But a marriage without a license is recognized if there has been a ceremony before three witnesses (*Landry v. Ballanger*, 120 La. 965).

### 2. MARRIAGEABLE AGE

No provision except that celebrants are forbidden to solemnize the marriage of a male under 14 or a female under 12 (92).

### 3. THE MARRIAGE LICENSE

a. **Requirement.**—"Licenses to celebrate marriages . . . shall be granted by . . ." (R. S. 4441).

b. **Where obtained.**—From the clerk of the court of the parish in which one of the parties is domiciled (100), which must also be the parish where the marriage

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is to be celebrated (104); in the parish of Orleans from the board of health and judges of the city courts (R. S. 4441).

c. *Advance notice, objections, etc.*—No provision. See 4d.

d. *Parental consent*.—Required for minors—21 years for both sexes according to Article 37—but no form is specified (97). Applicants who have attained the age of majority must furnish proof of that fact (98).

e. *Form of license*.—The license is directed to the celebrant (104).

f. *Record of license*.—Required, and is to be a public record. It must show the names, ages, relationship and residence of the parties, whether previously married, and if so the name of the former husband or wife, whether dead or alive, and the names and residence of the parents (R. S. 4465).

g. *Life of license*.—No provision.

h. *Other requirements and prohibitions*.—The intended husband must give bond with security in a sum proportionate to his means with condition that there exists no legal impediment to the marriage. The duration of the security is limited to two years (101). The issuer must require affidavit from one of the parties showing that they are not related within the prohibited degrees (R. S. 4440), and before issuing a license to a resident of another state, he must satisfy himself that such person is not prohibited from marrying in the state where he resides (R. S. 4460). *Penalty*.—For violating the last provision the issuer is punishable by fine or imprisonment (R. S. 4461).

### 4. SOLEMNIZATION

a. *The celebrant*.—A justice of the peace within his parish (103); a judge of a district court of the state (R. S. 4443); any minister of the gospel or priest of any religious sect, whether a citizen of the United States or not (102).

b. *Presentation of license*.—Required (104). *Penalty*.—A fine of not over \$1,000 (R. S. 4442).

c. *Form of ceremony*.—There must be three witnesses of full age (105). *Penalty*.—For violation, the celebrant is punishable by a fine of not over \$1,000 (R. S. 4442).

d. *Other requirements and prohibitions*.—In case of opposition to the marriage, if it be supported by oath of the party making it and by reason sufficient in the opinion of the judge to authorize suspension of the marriage, the parties shall be notified and a date set for a hearing thereon (106) within 10 days (107), and if the opposition is over-ruled the person making it must pay the costs (108).

For solemnizing the marriage of persons prohibited from marrying by the laws of the state of their residence the celebrant is subject to a fine or imprisonment or both in the discretion of the court (R. S. 4461).

The celebrant is forbidden to solemnize the marriage of a male under 14 or a female under 12. *Penalty*.—To be removed from office, if a magistrate, or deprived forever of the right to celebrate marriage, if a minister (92).

### 5. THE MARRIAGE RECORD

a. *Certificates and their distribution*.—A certificate appended to the license must be returned by the celebrant to the issuer within 30 days (105). In the parish of Orleans the celebrant must return the license to the state board of health after having endorsed thereon the date of the celebration (R. S. 648). *Penalty*.—For failure to return the certificate to the issuer he is subject to a fine of not over \$1,000 (R. S. 4442).

b. *Local record*.—The certificate and license, when returned to the issuer, must be filed and recorded by him (105; R. S. 4465). *Penalty*.—For violation a fine of not over \$1,000 (R. S. 4442).

c. *State record*.—Returns are made annually by the issuer of licenses to the secretary of the state board of health upon blanks provided by the state board,

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showing the essential facts (R. S. 4462). Penalty.—For failure to make such returns the issuer is subject to a forfeit of \$100 (R. S. 4463).

### 6. INTER-STATE RELATIONS

If a person who intends to remain a resident of Louisiana and who is forbidden by its laws to marry, contracts marriage elsewhere, the marriage is void in Louisiana. If a person who intends to remain a resident of some other jurisdiction and who is forbidden to marry by its laws, contracts marriage in Louisiana, the marriage is void (R. S. 4458). For penalties see 3h and 4d.

### 7. CERTAIN OTHER PROHIBITIONS

Marriages between whites and negroes (R. S. 4439).

## MAINE

**Authorities.**—Revised Statutes of 1916 (references are to its pages unless otherwise specified); Laws of 1917.

### 1. COMMON LAW MARRIAGES

Such marriages are probably not recognized, but there has been no clear decision on the point. See *S. v. Hodgskins*, 19 Me. 155; 36 Am. D. 743; *Ligonis v. Buxton*, 2 Me. 102; and *Hiram v. Pierce*, 45 Me. 367.

### 2. MARRIAGEABLE AGE

No provision. Apparently the common law ages apply—12 for females and 14 for males.

### 3. THE MARRIAGE LICENSE

a. Requirement.—Residents of the state intending to be joined in marriage shall cause notice of their intention to be recorded (1011). See 3c.

b. Where obtained.—Notice of intention must be filed with the clerk of the town in which each party resides; if only one resides in the state, in the town in which such party resides; if both are non-residents, in the town in which the marriage is to be solemnized (1011).

c. Advance notice, objections, etc.—Notice of intention must be filed five days before the license is granted except upon court order to the contrary, or in the case of emergency, at the authoritative request of a priest or attending physician, or when either of the parties has arrived as an immigrant within five days (Laws, 1917, p. 77).

Any person objecting to a contemplated marriage may file a caution in the office of the issuer who shall withhold the license until a decision is made, within seven days or longer at their discretion, by two justices of the peace, approving the marriage. The objection may be made before the notice of intention has been filed (1011).

d. Parental consent.—Required for males under 21 and females under 18. It must be in writing (1011) if they have parents or guardians living in the state. Penalty.—For intentional violation by issuer, \$20 (1011).

e. Form of license.—A certificate specifying when the intentions were filed; it must state conspicuously the penalty for solemnizing marriages when not authorized to do so (1011).

f. Record of license.—Notice of intention is recorded and open to public inspection (1011).

g. Life of license.—No provision.

h. Other requirements and prohibitions.—The issuer is forbidden to grant a

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license to a town pauper provided the overseers of the poor deposit their lists of paupers with him. **Penalty.**—\$20 (1011).

The issuer, for delivering to any person a certificate of the entry of intention of marriage (license) knowing it to be false in any particular, is subject to a fine of \$100, or imprisonment for six months (1013); for falsely stating the residence of either party, to a forfeit of \$20 (1011).

1. **Penalties not shown above.**—Whoever makes false representation to secure a certificate of record of intentions contrary to the chapter on marriage forfeits \$100 (1011).

### 4. SOLEMNIZATION

a. **The celebrant.**—A justice of the peace or notary public; women otherwise eligible, appointed by the governor; an ordained minister of the gospel engaged in the service of a religious body to which he belongs or a person licensed to preach by an association of ministers, religious seminary, or ecclesiastical body, whether a resident or non-resident of this state, of either sex, after being licensed by the secretary of state (1012); Quakers according to their forms (1012). **Penalty.**—For solemnizing when not authorized to do so or when forbidden to do so by reason of a previous offense against the marriage laws, a fine of not over \$1,000, or hard labor in the state prison for not over five years (1012).

b. **Presentation of license.**—Required (1011). **Penalty.**—See 4d.

c. **Form of ceremony.**—No provision.

d. **Other requirements and prohibitions.**—The celebrant, for knowingly solemnizing marriages contrary to the provisions of the chapter on marriage, is subject to a fine of \$100 and forbidden to solemnize any marriages thereafter (1013).

Whoever makes false representations to procure the solemnization of a marriage contrary to the provisions forfeits \$100 (1011).

### 5. THE MARRIAGE RECORD

a. **Certificates and their distribution.**—The celebrant must make a report of the marriage on a record furnished to him by the state board of health, with full data as to the contracting parties, and file copies thereof within six days with the clerk of the town in which the marriage intention was recorded and with the clerk of the town in which the marriage was solemnized (1014). When the marriage occurs in an unincorporated place it must be reported to the town clerk of the nearest town (1016). Residents of the state marrying elsewhere must file a certificate of their marriage on a blank furnished by the state registrar with the clerk of the town in which each of them lives within seven days after their return (1011). **Penalties.**—For failure by the celebrant to make return, a fine of not more than \$100 (1019). For failure by residents marrying in another state to make the required report, a fine of \$20 (1011).

The clerk or keeper of records of the meeting in which a Quaker marriage is solemnized shall make return (1012).

b. **Local record.**—The town clerk shall keep a record of all marriages reported or known to him (1017). He shall enforce, so far as possible, the provisions relating to return (1019).

c. **State record.**—The clerk shall report monthly to the state registrar all marriages which have occurred, together with the names, residences and official stations of all persons who have neglected to make the required returns (1017). **Penalties.**—For failure by the town clerk to report to the state registrar, from \$20 to \$100 (1017). Any person who hinders the state registrar from making any necessary investigations shall be fined from \$5 to \$20 (1019).

### 6. INTER-STATE RELATIONS

When residents of the state, with "intent to evade" its laws in regard to bigamy, incest and the marriage of mental defectives, marry elsewhere and continue to reside in Maine, the marriage is void there (1012).



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### 7. CERTAIN OTHER PROHIBITIONS

No insane, feeble-minded person, or idiot is capable of contracting marriage (Laws, 1917, p. 33).

Whoever contracts marriage contrary to the provisions of the chapter on marriage forfeits \$100 (1011).

## MARYLAND

**Authorities.**—Bagley's Civil Code of 1911 (references are to its pages unless otherwise specified); Bagley's General Laws of 1914, published as Volume III of his Code; Laws through 1917.

### 1. COMMON LAW MARRIAGES

Common law, or non-ceremonial marriages are technically not recognized for it has been held that no marriage is valid without some sort of religious ceremony (80 Maryland 89); but practically such marriages are recognized, for in the same decision it was held that marriage may be proved by general reputation, cohabitation and acknowledgment, and when these exist it will be inferred that a religious ceremony has taken place although evidence may not be obtained of the time, place and manner of the celebration. We are advised, however, that in prosecutions for bigamy and adultery, and in civil action for criminal conversation, the evidence of general reputation and cohabitation is not sufficient.

### 2. MARRIAGEABLE AGE

No statutory provision. Marriages contracted below the common law minimum ages of 14 for males and 12 for females are voidable when either of the parties arrive at the respective ages.

### 3. THE MARRIAGE LICENSE

**a. Requirement.**—A license is not required if banns are published (1448). **Penalty.**—Persons marrying without license or publication of banns are subject to a fine of \$100, but this shall not apply to Quakers (G. L. p. 415).

**b. Where obtained.**—From the clerk of the circuit court of the county in which the marriage is to be performed; in Baltimore from the clerk of the court of common pleas (1449).

**c. Advance notice, objections, etc.**—No advance notice. If it appears to the clerk that any legal impediment to the marriage exists, he shall withhold the license unless ordered by the court to issue it (1450).

**d. Parental consent.**—Required for males under 21 and females under 16. It must be given in person or in writing, attested by two witnesses (1450).

**e. Form of license.**—The license authorizes the marriage and contains the facts ascertained by the clerk as shown in 3h (G. L. p. 744).

**f. Record of license.**—Required (1450).

**g. Life of license.**—No provision.

**h. Other requirements and prohibitions.**—The clerk must examine on oath the person making application, to ascertain the full names, residence, age, and color of the parties, whether married, single or divorced, and the degree of relationship, if any—which facts shall be set out in printed form to be signed by the applicant (1449).

### 4. SOLEMNIZATION

**a. The celebrant.**—No provision except that the license is directed to any minister of the gospel. **Penalty.**—For solemnizing marriage when not authorized to do so, a fine of \$500 (G. L. p. 415).

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b. **Presentation of license.**—For solemnizing a marriage without license or publication of banns, the celebrant is subject to a fine of \$100 (G. L. p. 415).

c. **Form of ceremony.**—The license authorizes marriage according to the rules and ceremonies of the church, society and religious sect, and the laws of the state (1449).

d. **Other requirements and prohibitions.**—The celebrant is subject to the following penalties: for knowingly solemnizing an incestuous marriage, a fine of \$500; a miscegenetic marriage, \$100; the marriage of a male under 21 or female under 16 without parental consent, \$1,500 (G. L. pp. 415-16).

### 5. THE MARRIAGE RECORD

a. **Certificates and their distribution.**—The celebrant must file a certificate within 30 days with the issuer if a license has been issued (1449).

When a marriage is celebrated after publication of banns, the celebrant shall file a certificate with the clerk of the circuit court of the county where the marriage was solemnized or with the clerk of the court of common pleas if the marriage takes place in Baltimore (1451). **Penalty.**—For failure to file the certificate within 30 days, or within 60 days in case of marriage after publication of banns, the celebrant is subject to a fine of not less than \$10 (1451).

In the case of a Quaker ceremony, the parties must sign a certificate to the effect that they have agreed to take each other for husband and wife, and this certificate must be attested by at least 12 witnesses and recorded within 60 days either with the records of the society or in some court of record in the city or county in which the marriage takes place (1449).

b. **Local record.**—The certificate must be recorded by the clerk (1450). The return of a marriage celebrated after publication of banns shall be recorded (1451). Returns of marriage contracted in other states when one or both parties are citizens of Maryland are recorded in a "foreign marriage record book" (G. L. p. 746).

c. **State record.**—The clerk shall transmit monthly to the state bureau of vital statistics a report of each marriage (G. L. p. 744). **Penalty.**—For failure to make this report, a fine of \$10 for each offense (G. L. p. 745).

### 6. INTER-STATE RELATIONS

Residents marrying out of the state, without license or the publication of banns, shall each be fined \$100 (G. L. p. 415).

### 7. CERTAIN OTHER PROHIBITIONS

Marriages between a white person and a negro or person of negro descent to the third generation inclusive (G. L. p. 416).

## MASSACHUSETTS

**Authorities.**—Revised Laws of 1902 (references are to its pages unless otherwise specified); Supplement of 1908; Laws through 1918; Digest of 1906 and Supplement.

### 1. COMMON LAW MARRIAGES

Such marriages are not recognized (*Milford v. Worcester*, 7 Mass. 48; and *Norcross v. Norcross*, 155 Mass. 425).

### 2. MARRIAGEABLE AGE

No statutory provision. The common law ages are recognized—14 for males and 12 for females.

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### 3. THE MARRIAGE LICENSE<sup>1</sup>

a. **Requirement.**—Persons who intend to be joined in marriage in the state shall cause a notice of intention to be entered (1347). See 3e.

b. **Where obtained.**—From the clerk or registrar of the city or town in which the parties respectively dwell; if both are non-residents of the state, in the city or town in which the marriage is to be solemnized.

c. **Advance notice, objections, etc.**—Notice of intention must be filed at least five days before the license is issued, except in the case of immigrants who have arrived within five days (Acts, 1911, pp. 938-39), upon order of the court or in cases where death is imminent upon the authoritative request of a clergyman or physician, license may issue immediately (Acts, 1912, p. 394). **Penalty.**—For issuing a license before the expiration of the five day period a forfeit of not more than \$100 (Acts, 1911, p. 939).

There is no provision as to objections.

d. **Parental consent.**—Required for males under 21 and females under 18. It must be given in writing. If there is no parent or guardian in the state competent to act the license may be issued without such consent (p. 1349), unless the male is under the age of 18 years or the female under the age of 16, when such notice may be given as the court may order by the parent who lives outside of the state, provided such parent has not deserted his or her family (Sup., p. 1297). The issuer may require of the applicant an affidavit setting forth the age of the parties as sworn to before the justice of the peace (p. 1349). **Penalty.**—For granting a license without parental consent when the issuer has reasonable cause to believe the persons to be of age requiring consent, a forfeit of not over \$100 (Acts, 1911, p. 939).

If it is necessary to give notice in two states of the intention of marriage of a minor, the issuer who takes the consent of the parent shall take it in duplicate, retaining one copy and delivering the other, attested by him, to the applicant to be given to the person issuing the second license. **Penalty.**—For violation, a fine of not more than \$500, or imprisonment for not more than one year, or both (1352).

A marriage license may not be issued for a male under 18 or a female under 16 without a court order, in addition to parental consent (1348).

e. **Form of license.**—The license certifies the time when notice of intention was entered and all facts relative to the marriage which are required by law to be ascertained and recorded, except those relative to the celebrant (p. 1348; Acts, 1914, p. 383).

f. **Record of license.**—No provision.

g. **Life of license.**—If the license is not used it must be returned to the issuer within six months (Acts, 1914, p. 383).

h. **Other requirements and prohibitions.**—The issuer shall require notice of intention of marriage to be given to him in writing by one of the parties to the marriage or the parent or legal guardian, and shall require the person who gives such notice to make oath to the truth of all statements therein shown of which such person shall have knowledge, and also to make oath that there are no legal impediments to the marriage. **Penalty.**—For violation, a fine of not over \$500, or imprisonment not over one year, or both (R. L. Ch. 151, Sec. 17, as amended).

The clerk may refuse to issue a license if he has reasonable cause to believe that any of the statements contained in the notice of intention are incorrect, but he may at his discretion accept depositions under oath made before him. He may also dispense with the statement of any facts required by law to be given in the notice of intention if they do not relate to or affect the identification or age of the parties if he is satisfied that the same cannot without reasonable effort be obtained (1349). Divorced persons applying for a marriage license shall accompany their application by a certificate or certified copy from the clerk of the court by which

<sup>1</sup> Called a "certificate" in the Massachusetts law.

## AMERICAN MARRIAGE LAWS

the divorce was granted, showing certain facts as to the divorce. If such a certificate cannot be obtained by the applicant the judge of probate of the county where the license is desired may, in his discretion, grant a certificate of the facts as stated by the applicant (Acts, 1912, p. 491).

The clerk is forbidden to issue a license for the marriage of non-residents prohibited from inter-marriage by the laws of their state. He shall satisfy himself on this point by requiring affidavits and otherwise. **Penalty.**—For issuing a license to such persons with the knowledge that they are prohibited from such marriage in their own state, a fine of from \$100 to \$500, or imprisonment for not over one year, or both (Acts, 1913, p. 302).

Whoever, when applying for a license, wilfully makes a false statement relative to the age, residence, parent, master or guardian of either of the parties intending marriage shall forfeit not more than \$200 (p. 1352).

### 4. SOLEMNIZATION

a. **The celebrant.**—A justice of the peace if he is also a clerk or assistant clerk of a city or town, or a registrar or assistant registrar of the city or town in which he holds such office, or if he is also clerk or assistant clerk of a court in a city or town in which the court is authorized to be held, or if he has been designated by the governor to solemnize marriage; a minister of the gospel ordained according to the usages of his denomination who resides in the commonwealth and continues to perform the functions of his office, or a rabbi of the Israelitish faith licensed by the congregation of such faith established in the commonwealth who has filed with the clerk or registrar of the city or town in which he resides a certificate of the establishment of the synagogue; the Society of Friends according to its usages. No person shall solemnize marriage unless he is able to read and write English (1350). **Penalty.**—For solemnizing a marriage when not authorized to do so, a fine of not over \$500, or imprisonment for not over one year, or both (p. 1351).

b. **Presentation of license.**—Required (Laws, 1911, p. 939). **Penalty.**—For solemnizing without a license, a fine of not over \$500 (1352).

c. **Form of ceremony.**—No provision.

d. **Other requirements and prohibitions.**—The celebrant is forbidden to solemnize a marriage if he has reason to believe that either party is a minor and parental consent has not been given, if there is any parent or guardian in the state (1346). **Penalty.**—For violation, a fine of not over \$500, or imprisonment not over one year, or both (1342).

He is also forbidden to solemnize a marriage if he has solemnized a marriage of residents of another state that would be prohibited by the laws of that state from marrying. **Penalty.**—For violation, a fine of from \$100 to \$500, or imprisonment not over one year, or both (Acts, 1913, p. 302).

For solemnizing a marriage upon a license more than six months after its issuance the celebrant is subject to a fine of not over \$10 (Acts, 1914, p. 383).

### 5. THE MARRIAGE RECORD

a. **Certificates and their distribution.**—The celebrant shall between the first and tenth day of the month following the marriage return each license to the clerk who issued it, and send a copy of each to the clerk in the place of solemnization, if this is not the residence of the parties. The license shall be endorsed to show the place and date of the marriage. **Penalty.**—For failure to do so, a forfeit of from \$20 to \$100 (p. 1350).

No alteration or erasure shall be made by any person on this certificate until it has been returned to the office of the clerk and then only in such form and to such extent as he may prescribe. **Penalty.**—For making an illegal alteration or erasure a fine of not over \$100 (p. 1352).

Residents of the state marrying elsewhere but returning to Massachusetts must file, within seven days after their return, with the clerk or registrar of the

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city or town in which either of them lived at the time of their marriage, a certificate including the facts relative to the marriage required by law (1349). **Penalty.**—For failure to do so, a forfeit of \$10 (1349).

b. **Local record.**—The certificates shall be recorded by the clerk or registrar (1350). **Penalty.**—A forfeit of from \$20 to \$100.

c. **State record.**—The clerk shall transmit annually to the secretary of the commonwealth certified copies of the record of marriage (p. 406). **Penalty.**—For wilfully making a false return a fine of not over \$50.

### 6. INTER-STATE RELATIONS

If a person who intends to remain a resident of Massachusetts, and is forbidden by its laws to marry, contracts marriage elsewhere, such marriage is null and void in Massachusetts. If a person who intends to remain a resident of some other jurisdiction, and is forbidden to marry by its laws, contracts marriage in Massachusetts, the marriage is void (Acts, 1913, p. 302).

### 7. CERTAIN OTHER PROHIBITIONS

It is a criminal offense to entice away a girl under the age of 16 years for a clandestine marriage without parental consent (1785).

An insane person or an idiot is not capable of contracting marriage (1356).

## MICHIGAN

**Authorities.**—Compiled laws of 1915 (references are to its sections unless otherwise indicated); Laws through 1917.

### 1. COMMON LAW MARRIAGES

Such marriages have been recognized by the courts (*Hutchins v. Kimmell*, 31 Mich. 130; *Peet v. Peet*, 52 Mich. 467).

### 2. MARRIAGEABLE AGE

Males 18; females 16 (11362). But marriages of persons below these ages are allowed under special circumstances. See 3b, footnote. A marriage solemnized when either of the parties was under the age of legal consent, if they have separated by mutual consent during such non-age, or if the non-age party elects to terminate the marriage relation before arriving at the age of consent, is deemed void<sup>1</sup> (11393). Action for annulment may be brought by a parent or guardian or next friend of the non-age party (11422).

### 3. THE MARRIAGE LICENSE

a. **Requirement.**—It is necessary for all parties intending to be married to obtain a license (11376).

b. **Where obtained.**—From the county clerk of the county in which either party resides; if both are non-resident, from the county in which the marriage is to be performed (11376).

In a special act "for the protection of the reputation and good name of certain persons" it is provided that a judge of probate shall issue a license, without publicity, to any female making application under oath that she is with child which, if born before her marriage, will be illegitimate; or has lived with a man

<sup>1</sup> In practice legal process is necessary to establish the facts on which this status is conditioned.

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and has been considered as his wife; or for other good reason deemed sufficient by him (11387).<sup>1</sup>

c. *Advance notice, objections, etc.*—No provision.

d. *Parental consent.*—Required for females under 18 years. Written consent must be given personally before the clerk or properly acknowledged and must be preserved on file (11378; Public Acts, 1917, p. 387).

e. *Form of license.*—The license shows the full name, age, color, residence, birthplace, occupation, and if known, the father's name and mother's maiden name, of each party; any previous marriage of either party, the bride's maiden name in case she is a widow; the date of license and signature of the clerk (11377).

f. *Record of license.*—Required (11377).

g. *Life of license.*—No provision.

h. *Other requirements and prohibitions.*—Besides the matters shown in the marriage license the applicant must make affidavit of the competency of the parties, to be filed with the issuer (11377). *Penalties.*—Any applicant for a license who swears falsely to a statement in the license is guilty of perjury (11383). Any issuer who refuses a license to persons properly applying and legally entitled to one, or who violates any of the provisions of the act on marriage is punishable by a fine of from \$25 to \$100, and in default of payment shall be imprisoned for 30 days (11380).

### 4. SOLEMNIZATION

a. *The celebrant.*—A justice of the peace or judge of probate in his county; a judge of a municipal court in his municipality (see also 3b, footnote); a minister of the gospel ordained or authorized to solemnize marriages according to the usages of his denomination and who is pastor of any church in the state or who shall continue to preach the gospel in the state (11368); Quakers or other denominations having any peculiar mode of solemnizing marriage (11374). *Penalty.*—For undertaking to solemnize marriage when not authorized to do so, imprisonment for not more than one year, or a fine of from \$50 to \$500, or both (11372).

b. *Presentation of license.*—For solemnizing a marriage without a license the celebrant is subject to a fine of \$100, and in default of payment, imprisonment for 90 days (11381).

c. *Form of ceremony.*—The parties must solemnly declare in the presence of the celebrant and at least two attending witnesses that they take each other as husband and wife (11370). *Penalty.*—If any celebrant shall join persons in marriage contrary to the provisions of this chapter, he shall forfeit, for every such offense, a sum not exceeding \$500 (11371).

*Marriages among Friends, etc., must be solemnized in the manner heretofore practiced by them (11374).*

d. *Other requirements and prohibitions.*—The celebrant, before solemnizing the marriage, must examine at least one of the parties on oath which he is authorized to administer, as to the legality of the marriage (11369). *Penalties.*—For solemnizing a marriage with knowledge of any legal impediment, one year's

<sup>1</sup> The judge is authorized to perform the ceremony of marriage upon such a license or he may issue a written permit to another person to perform it (11388). He may also marry such persons when under the marriageable age on the written request of the parent (11387). The only record of the marriage shall be the certificate returned to the judge of probate and a duplicate given to the bride (11388). The papers shall be filed by the judge of probate in a private file and within 10 days a duplicate shall be sent to the secretary of state. These papers and the duplicates shall be open to inspection only upon written order of the judge of a circuit or supreme court, for such use as is designated in the order, and such an order shall be made only upon the written request of the persons so married or when necessary to the protection of property rights (11389). All knowledge which shall come to the judge, secretary of state or their deputies, or the physicians endorsing the application or the witnesses shall be deemed privileged communications. Any violation of confidence is punishable by a fine of from \$25 to \$100, and in default, imprisonment for not over three months. Any editor or proprietor of a newspaper who gives publicity to such a marriage is punishable by a fine of from \$50 to \$100, and in default, imprisonment not over 30 days and in addition he is subject to an action of libel (11390). If any judge neglects to make proper return he shall be fined not over \$50 (11390).

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imprisonment, or a fine of from \$50 to \$100, or both (11372). For violating any provision of this act, a fine of \$100 and in default of payment, imprisonment in the county jail for 90 days (11381).

### 5. THE MARRIAGE RECORD

a. **Certificates and their distribution.**—The certificate shall be returned by the celebrant within 10 days to the issuer (11379). See also 3b, footnote. **Penalty.**—For failure by the celebrant to make the return a fine of not over \$100, or 90 days imprisonment, or both (11382).

b. **Local record.**—The certificates returned to the issuer shall be recorded and filed (11378). **Penalty.**—See last penalty under 4d, also 3b, footnote.

c. **State record.**—The clerk shall as often as once in three months make a report to the secretary of state of all licenses and certificates received by him (11378). See also 3b, footnote.

### 6. INTER-STATE RELATIONS

No statutory provision. "The general rule of law is that a marriage valid where celebrated is valid everywhere, and the converse of this is equally general, that a marriage void where celebrated is void everywhere" (*Hutchins v. Kimmell*, 31 Mich. 131).

### 7. CERTAIN OTHER PROHIBITIONS

The marriage of an insane person, idiot or person who has been confined in any public institution or asylum as an epileptic, feeble-minded, imbecile or insane patient and who has not filed in the office of the issuer a verified certificate from two regularly licensed Michigan physicians stating that the applicant has been completely cured and that there is no probability of transmission of such defect to the issue of the marriage (11367). Such persons shall not be capable of contracting marriage.

The marriage of a person who has been afflicted with syphilis or gonorrhea and who has not been cured of the same (11367). Such persons shall not be capable of contracting marriage.

**Penalties.**—Marriage by a person with syphilis or gonorrhea is deemed a felony and is punishable by a fine of from \$500 to \$1,000, or imprisonment for not more than five years, or both, and it is provided that in such prosecution the husband or wife may be examined as witness against each other whether they consent or not, and that any physician who has attended the defendant shall be compelled to testify. Any person of sound mind who marries a mentally defective person as prohibited above, with knowledge of the disability, or who aids in procuring any such marriage license is deemed guilty of a felony and punished by a fine of not more than \$1,000, or imprisoned from one to five years, or both (11367).

## MINNESOTA

**Authorities.**—General Statutes of 1913 (references are to its sections unless otherwise specified); Supplement of 1917; Minnesota Reports.

### 1. COMMON LAW MARRIAGES

Such marriages are recognized (*State v. Worthington*, 23 Minn. 528; *Le Suer v. Le Suer*, 122 Minn. 407).

### 2. MARRIAGEABLE AGE

Males 18; females 15 (7089). Marriages under this age may be annulled on suit by the non-aged party unless subsequently confirmed (7107).

## AMERICAN MARRIAGE LAWS

### 3. THE MARRIAGE LICENSE

a. **Requirement.**—Before any person shall be joined in marriage a license shall be obtained (7094). But a license is not required in the case of Friends (7104).

b. **Where obtained.**—From the clerk of the district court of the county in which the woman resides; or if she is a resident of another state, of the county where the marriage is to take place (7094).

c. **Advance notice, objections, etc.**—No provision.

d. **Parental consent.**—Required for males under 21 and females under 18 unless previously married (7095; 7214). It must be given personally before the issuer or certified under the hand of the parents or guardians, attested by two witnesses, one of whom shall appear before the issuer and make oath that he saw the parents subscribe or heard them acknowledge the certificate (7095). **Penalty.**—Any issuer violating this provision shall forfeit to the parties aggrieved a sum not to exceed \$1,000.

e. **Form of license.**—No provision except that it shall be under the official seal of the clerk (7095).

f. **Record of license.**—Required (7095).

g. **Life of license.**—No provision.

h. **Other requirements and prohibitions.**—The issuer shall examine upon oath the party applying for the license relative to the legality of the marriage (7095). **Penalty.**—For issuing a license in any other manner than as provided, a forfeit of not over \$1,000 to the parties aggrieved (7095).

### 4. SOLEMNIZATION

a. **The celebrant.**—A justice of the peace in his county; a judge of a court of record, superintendent of the department for the deaf or dumb or a state school for the deaf and blind (7091); a court commissioner (289); the Society of Friends (7104); a licensed or ordained minister of the gospel in regular standing and communication with a religious society (7091), after filing a copy of his credentials with the clerk of the district court of some county, who shall record the same and give him a certificate. The place where his credentials are recorded shall be endorsed upon each certificate of marriage granted by any minister (7092). **Penalty.**—For undertaking to solemnize marriage when not legally authorized to do so, imprisonment for not more than one year, or a fine of not over \$500, or both (7102).

b. **Presentation of license.**—No specific provision. But see 4d, second paragraph, for general penalty.

c. **Form of ceremony.**—The parties must declare in the presence of the celebrant and at least two attending witnesses that they take each other as husband and wife (7096). Members of the Society of Friends may solemnize marriage in the form practiced in their meetings (7104).

d. **Other requirements and prohibitions.**—The celebrant may examine the parties under oath, which he is authorized to administer, as to the legality of the intended marriage and shall not solemnize a marriage unless he is satisfied that there is no legal impediment. **Penalties.**—For solemnizing a marriage knowing of any legal impediment, imprisonment of not more than one year, or a fine of not over \$500, or both (7102). Solemnizing a marriage when either party is known to the celebrant to be under the marriageable age or to be an idiot or insane person or a marriage to which any legal impediment exists is further declared to be a gross misdemeanor (8970).

The celebrant is further subject to a penalty for solemnizing marriage contrary to any provision of the chapter on marriage by a forfeit of not over \$500, or imprisonment for not over one year (7101).



## LAWS BY STATES

### 5. THE MARRIAGE RECORD

a. **Certificates and their distribution.**—The celebrant shall, within one month, file with the issuer a certificate of the marriage (7098), and within the same period deliver to the clerk of the district court of the county in which the marriage took place or of the county to which said county is attached for judicial purposes, a similar certificate (7099). The clerk of the meeting in which a Quaker marriage is solemnized shall file the latter certificate. If the marriage does not take place in a meeting the certificate shall be signed by the parties and at least six witnesses and filed by the parties (7104). The celebrant shall also give a certificate to each of the contracting parties (7097). **Penalties.**—For failure by the celebrant or other responsible person to make return within the required time, a sum of not over \$100 (7100; 7104). For wilfully making a false certificate, a sum of not over \$500, or imprisonment not over one year (7101).

b. **Local record.**—The certificate shall be filed and recorded by the clerk. **Penalty.**—For failure to record it, a sum of not over \$100 (7100).

c. **State record.**—No provision.

### 6. INTER-STATE RELATIONS

No provision.

### 7. CERTAIN OTHER PROHIBITIONS

Marriage between persons either of whom is epileptic, feeble-minded, an imbecile or insane (7090).

## MISSISSIPPI

**Authorities.**—Code of 1917 (references are to its sections); Laws of 1918.

### 1. COMMON LAW MARRIAGES

Such marriages are recognized. A license is essential to the validity of a marriage but this provision is not to be construed "so as to invalidate any marriage that is good at common law" (2556). See also *Floyd v. Calvert*, 53 Miss. 37.

### 2. MARRIAGEABLE AGE

No statutory provision, though it is provided that marriages within the age of consent for carnal intercourse may be annulled (780).

### 3. THE MARRIAGE LICENSE

a. **Requirement.**—A marriage shall not be contracted unless a license for it shall have been issued (2556).

b. **Where obtained.**—From the clerk of the circuit court of the county in which the female usually resides (2552).

c. **Advance notice, objections, etc.**—No provision.

d. **Parental consent.**—Required for males under 21 and females under 18. It must be personally given before the issuer, or in writing proved by at least one credible witness (2552). **Penalty.**—Issuing otherwise than as prescribed is a misdemeanor, but if the clerk has required an affidavit of the applicant or other credible person that the contracting parties have reached the prescribed ages, he cannot be prosecuted (2552).

e. **Form of license.**—It authorizes the marriage (2552).

f. **Record of license.**—The license, affidavit and parental consent must be recorded at issuance (2552).

g. **Life of license.**—No provision.

## AMERICAN MARRIAGE LAWS

**h. Other requirements and prohibitions.**—The issuer must take an affidavit from the applicant that there is no legal cause to obstruct the marriage. Penalty.—Issuing otherwise than as prescribed is a misdemeanor (2552). The penalty does not apply if the parties are non-residents of the state (*Holland v. Beard*, 59 Miss. 161).

### 4. SOLEMNIZATION

**a. The celebrant.**—A judge of the supreme or circuit court, chancellor, justice of the peace or members of the boards of supervisors within their respective counties (2554). An ordained minister of the gospel in good standing (2554); the pastor of a religious society (2555), or Quakers, Mennonites or other societies which solemnize marriage by consent of the parties taken in open congregation (Implied in 2553).

**b. Presentation of license.**—Required (2554).

**c. Form of ceremony.**—Not specified.

### 5. THE MARRIAGE RECORD

**a. Certificates and their distribution.**—The celebrant must transmit a certificate of the marriage to the issuer within three months after solemnization (2553). Penalty.—For failure to do so, a forfeit of \$50 to the issuer, who may sue (2553).

In case of a marriage by a religious society, the keeper of the records shall return a certificate to the "clerk of the circuit court of the county" (2555).

**b. Local record.**—The clerk must record the certificate. He must examine the records once a month, and if any celebrant is found in default he shall institute inquiry and issue a summons requiring return of the certificate (2553).

**c. State record.**—No provision.

### 6. INTER-STATE RELATIONS

Residents of the state who attempt to evade its laws against incestuous and miscegenetic marriages by marrying elsewhere are in the same position, on their return, as if they had married in the state (758; 2551).

### 7. CERTAIN OTHER PROHIBITIONS

The marriage of a white person with a person of one-eighth or more negro or Mongolian blood is unlawful and void (2551).

## MISSOURI

**Authorities.**—Revised Statutes of 1909 (references are to its sections unless otherwise specified); Laws through 1915.

### 1. COMMON LAW MARRIAGES

Such marriages are recognized (*Dyer v. Brannock*, 66 Mo. 391, and *State v. Bittick*, 103 Mo. 183).

### 2. MARRIAGEABLE AGE

No provision, but the consent of the parties capable in law of contracting marriage is essential to its validity (8279), and therefore the common law ages of 14 for males and 12 for females are adopted. A marriage invalid because of incapacity of one party is rendered valid by ratification after the incapacity is removed (*Gross v. Gross*, 96 Mo. App. 486).

## LAWS BY STATES

### 3. THE MARRIAGE LICENSE

- a. Requirement.—Previous to any marriage a license shall be obtained (8283).
- b. Where obtained.—From the recorder of any county or of the city of St. Louis (8284).
- c. Advance notice, objections, etc.—No provision.
- d. Parental consent.—Required for males under 21 and females under 18 (8284). It must be given either at the time of issuance in person or by a certificate in writing, duly attested (8289).
- e. Form of license.—It authorizes the marriage and shows the names and residence of each party, whether either is a minor and if so, the fact of parental consent (8284) and name of the parent consenting (8289).
- f. Record of license.—The license must be recorded at issuance (8285). Penalty.—For failure to record it, a fine of from \$5 to \$100 (8286).
- g. Life of license.—No provision. See 5a.
- h. Other requirements and prohibitions.—The recorder is subject to a penalty for wilfully refusing to issue a license to any person legally entitled thereto (8286). For issuing a license contrary to the provisions of the chapter on marriage, he is subject to a fine of not over \$500.

### 4. SOLEMNIZATION

- a. The celebrant.—A judge of a court of record or justice of the peace; any licensed or ordained preacher of the gospel who is a citizen of the United States or who is a resident of and a pastor of any church in this state (Laws, 1911, p. 317).
- b. Presentation of license.—For solemnizing a marriage when a marriage license has not been obtained the celebrant is subject to a fine of not over \$500, and also to civil action by the injured parent (8290).
- c. Form of ceremony.—No provision.

### 5. THE MARRIAGE RECORD

- a. Certificates and their distribution.—The celebrant must certify on the license the date and fact of marriage, and return it to the issuer within 90 days after issuance (8284). Penalty.—For failure to make return or for making a false return a fine of from \$5 to \$100 (8286). The recorder must certify to the grand jury at each regular term of the court of criminal jurisdiction a list of all marriage licenses issued by him, which have not been returned to him within 90 days after issuance (8287).
- b. Local record.—The recorder, when the license is returned to him, endorsed as shown in 5a, must record it (8287). Penalties.—For wilfully making a false record, he is subject to a fine of from \$5 to \$100 (8286); for failure to certify the list of delinquents to the grand jury, a fine of from \$5 to \$25 (8287).
- c. State record.—No provision.

### 6. INTER-STATE RELATIONS

- A person having a spouse living cannot evade punishment for bigamy by marrying outside of the state (4722).

### 7. CERTAIN OTHER PROHIBITIONS

- Marriage between white persons and negroes or Mongolians (8280).

## AMERICAN MARRIAGE LAWS

### MONTANA

**Authorities.**—Revised Code of 1907 (references are to its sections unless otherwise specified); Supplement of 1915; Laws through 1917.

#### 1. COMMON LAW MARRIAGES

Such marriages are recognized. To constitute marriage consent must be followed by solemnization, or by mutual and public assumption of the marital relation (3607). See also *O'Malley v. O'Malley*, 46 Mont. 549.

#### 2. MARRIAGEABLE AGE

Males 18; females 16 (3608).

#### 3. THE MARRIAGE LICENSE

**a. Requirement.**—Previous to solemnization a license must be obtained (3618).

**b. Where obtained.**—From the clerk of the district court of the county in which the marriage is to take place (3618).

Neither party is obliged to appear, for the application may be made by an attorney for either party (3818). By implication in Section 3622 application may be made by mail.

**c. Advance notice, objections, etc.**—No provision.

**d. Parental consent.**—Required for males under 21 and females under 18. It must be in writing and proved by the testimony of at least one competent witness (3619; 3584). When application is made by mail the parental consent must be accompanied by an affidavit (3622).

Marriages of males under 18 and females under 16, without parental consent, may be annulled on suit of the parent or guardian during the non-age of the minor, or on suit of the minor within two years after reaching the marriageable age, provided the marriage is not then recognized (3636-37).

**e. Form of license.**—The license must show the name, residence, place of birth, parentage, ages and color of the parties, and whether or not they have been previously married or divorced (3620).

**f. Record of license.**—Required (3620).

**g. Life of license.**—No provision.

**h. Other requirements and prohibitions.**—The clerk may, in his discretion, require that the necessary information (see 3e) be given under oath. When application is made by mail the statement of facts must be accompanied by an affidavit as to the correctness thereof, made before a proper official (3622). License may be refused if either party is legally incompetent or after a divorce within the period which must elapse before re-marriage (3621).

#### 4. SOLEMNIZATION

**a. The celebrant.**—A justice of the supreme court; judge of the district court; justice of the peace; mayor of any city; a priest or minister of the gospel or a religious society according to its usages (3617). Marriage may be solemnized by declaration (3631).

**b. Presentation of license.**—Required (3623).

**c. Form of ceremony.**—The parties must solemnly declare in the presence of the celebrant and at least two witnesses that they take each other as husband and wife (3629). Persons marrying without the solemnization provided for must jointly make a declaration of marriage showing their names, ages and residences; the fact and time of marriage; and that the marriage has not been solemnized (3631). If no record of a marriage is known to exist the parties may make a

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similar declaration. These declarations must be subscribed by the parties, and attested by at least three witnesses, and acknowledged and recorded (3632-33).

d. **Other requirements and prohibitions.**—The celebrant, for knowingly solemnizing a miscegenetic marriage, is subject to a fine of \$500, or imprisonment for one month, or both (Supplement 3615-a); for knowingly solemnizing an incestuous or other marriage forbidden by law, a fine of from \$100 to \$1,000, or imprisonment from one year to two years, or both (8460).

### 5. THE MARRIAGE RECORD

a. **Certificates and their distribution.**—The celebrant shall certify the fact of marriage upon the license and within 30 days return the license and the certificate to the issuer (3623). He must also file quarterly with the county clerk a certified copy of his own marriage registry (1761). **Penalties.**—For failure to return the certificate to the issuer within 30 days the celebrant shall forfeit from \$10 to \$50 (3625). For making a false return to the county clerk a fine of from \$100 to \$1,000, or imprisonment from one to two years, or both (8461).

b. **Local record.**—The clerk of the district court shall record the certificate (3623). The copy of the celebrant's registry shall be recorded in the registry of marriages kept by the county clerk. The same marriage must be recorded by the county clerk but once (1763). **Penalties.**—For failure by the clerk of the district court to record the certificate within one month, from \$10 to \$50 (3625). For wilfully making a false report of any return, from \$100 to \$1,000, or imprisonment from one to two years, or both (8461).

c. **State record.**—No provision.

### 6. INTER-STATE RELATIONS

Marriages valid where contracted are valid in Montana (3614), but this is modified by the law that if residents of the state contract a miscegenetic marriage elsewhere it be void (Sup., p. 3615-a).

### 7. CERTAIN OTHER PROHIBITIONS

Miscegenetic marriages include marriages between white persons and negroes, Chinese or Japanese. Such marriages are void (Sup., p. 3615-a).

## NEBRASKA

**Authorities.**—Revised Statutes of 1913 (references are to its sections); Laws through extraordinary session of 1918.

### 1. COMMON LAW MARRIAGES

Such marriages are recognized (Coad v. Coad, 87 Nebr. 290; Bailey v. State, 36 Nebr. 808).

### 2. MARRIAGEABLE AGE

Males 18; females 16 (1541). Marriages under the ages may be annulled upon application of the parents or guardian, unless ratified after reaching the prescribed age (1596); and may be annulled if the parties separate during non-age (1557).

### 3. THE MARRIAGE LICENSE

a. **Requirement.**—Previous to a solemnization of any marriage a license must be obtained.

b. **Where obtained.**—From the county judge of the county in which the marriage is to take place (1543).

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- c. **Advance notice, objections, etc.**—No provision.
- d. **Parental consent.**—Required for males under 21 and females under 18 (1627). Consent must be given in person or in writing, proved by the testimony of at least one competent witness (1544).
- e. **Form of license.**—It must show the names, ages, places of birth, residence, color of the parties and the names of their parents (1543).
- f. **Record of license.**—Required (1545).
- g. **Life of license.**—No provision.
- h. **Other requirements and prohibitions.**—If it appears that either party is legally incompetent or that there is any impediment, the license shall not be granted (1546).

### 4. SOLEMNIZATION

- a. **The celebrant.**—A judge or justice of the peace (1547); a preacher of the gospel authorized by the usages of his church to solemnize marriage (1547); religious societies of which the parties are members, according to their customs (1554). **Penalty.**—For undertaking to solemnize marriage when not legally authorized to do so, a fine of not over \$500, or imprisonment not exceeding one year (1552).
- b. **Presentation of license.**—No provision.
- c. **Form of ceremony.**—The parties must solemnly declare in the presence of the celebrant and at least two attending witnesses that they take each other as husband and wife (1548).
- d. **Other requirements and prohibitions.**—A celebrant who solemnizes a marriage, knowing of any legal impediment, is subject to a fine of not over \$500 or imprisonment not exceeding one year (1552).

### 5. THE MARRIAGE RECORD

- a. **Certificates and their distribution.**—The celebrant must file a certificate within three months with the county judge of the county in which the marriage took place (1550). **Penalties.**—For failure to file the certificate with the county judge, or for wilfully making a false certificate, a fine of not over \$500 or imprisonment not exceeding one year (1552).
- b. **Local record.**—The certificate must be recorded by the judge within one month after he receives it (1551). **Penalties.**—For failure by him to record it, or for wilfully making a false record, a fine of not over \$500 or imprisonment not exceeding one year (1552).
- c. **State record.**—The county judge shall report annually to the secretary of the state board of health. **Penalty.**—For failure to make this report a fine of \$25 for each instance of neglect (2754).

### 6. INTER-STATE RELATIONS

Marriages valid where contracted are valid in Nebraska (1556), even though the parties left Nebraska to evade its laws, unless such marriage is expressly declared void (*State v. Hand*, 87 Nebr. 189; *Staley v. State*, 89 Nebr. 701).

### 7. CERTAIN OTHER PROHIBITIONS

Marriage between a white person and a person of one-eighth or more negro, Japanese or Chinese blood is void (1542). The marriage of an idiot or insane person is declared void in Sec. 1542, but such a marriage may be recognized by the incapable person after restoration of reason (1598).

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### NEVADA

**Authorities.**—Revised Laws of 1912 (references are to its sections); Laws through 1917.

#### 1. COMMON LAW MARRIAGES

Such marriages are recognized (State v. Zichfeld, 23 Nev. 304).

#### 2. MARRIAGEABLE AGE

Males, 18; females, 16 (2339). Such marriages may be confirmed after arriving at the prescribed age (2356).

#### 3. THE MARRIAGE LICENSE

a. **Requirement.**—Previous to persons being joined in marriage a license shall be obtained (2341).

b. **Where obtained.**—From the county clerk of the county in which one of the parties resides; if both are non-residents, from any county clerk (2341).

c. **Advance notice, objections, etc.**—No provision.

d. **Parental consent.**—Required for males under 21 and females under 18, not previously married (2339). It must be given personally before the clerk, or must be in writing attested by two witnesses, one of whom shall appear and verify the signature (2341).

e. **Form of license.**—No provision.

f. **Record of license.**—No provision.

g. **Life of license.**—No provision.

h. **Other requirements and prohibitions.**—The issuer may inquire of the parties upon oath or affirmation relative to the legality of the marriage, and if satisfied that there is no legal impediment, he shall grant the license (2341).

#### 4. SOLEMNIZATION

a. **The celebrant.**—A justice of the supreme court; a judge of the district court in his district or justice of the peace in his county; an ordained minister of any religious society or congregation within the state, who after producing his clerical credentials, has received a license from any district court authorizing him to solemnize marriage, this license to be produced to the county clerk of every county in which he solemnizes a marriage and the clerk to record it (2340); the Society of Friends (2353). **Penalty.**—Any person not legally authorized to solemnize marriage, who undertakes to do so, shall be fined not over \$500 and imprisoned until such fine is paid (2348).

b. **Presentation of license.**—Required (6479). **Penalty.**—For solemnizing without requiring it, a fine of not over \$500, or imprisonment for not over six months, or both (6480).

c. **Form of ceremony.**—The parties must declare in the presence of the celebrant, and at least two attending witnesses, that they take each other as husband and wife (2342). Quakers may solemnize according to their forms (2353).

d. **Other requirements and prohibitions.**—For solemnizing a marriage, knowing of any legal impediment, the celebrant is subject to a fine of not over \$500 and imprisonment until such fine is paid (2343). Any celebrant who knowingly solemnizes a miscegenetic marriage is guilty of a gross misdemeanor (6516).

#### 5. THE MARRIAGE RECORD

a. **Certificates and their distribution.**—The celebrant shall make a record of the marriage, and within 30 days deliver to the recorder of deeds of the county in which the license was issued a certificate thereof (2344). **Penalties.**—For failure

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to make the required return, a fine of from \$20 to \$500 or imprisonment from 10 to 50 days, or both (2346). For wilfully making a false certificate, a forfeit of not over \$500 or imprisonment for not over one year, or both (2347).

b. **Local record.**—The certificates must be filed and recorded (2345). **Penalty.**—For failure on the part of the recorder to do this, a fine of from \$100 to \$500 or imprisonment from 50 days to six months, or both (2346).

c. **State record.**—No provision.

### 6. INTER-STATE RELATIONS

No provision.

### 7. CERTAIN OTHER PROHIBITIONS

The marriage of a white person with a person of the black, brown, yellow or red races (6514).

## NEW HAMPSHIRE

**Authorities.**—Public Statutes of 1901 (references are to its pages unless otherwise specified); Supplement of 1913; Laws through 1917.

### 1. COMMON LAW MARRIAGES

Such marriages, under certain circumstances, are recognized. Persons who cohabit and acknowledge each other as husband and wife and are generally reputed to be such for a period of three years and until the death of one of them, shall be deemed to have been legally married, provided they are capable of contracting marriage (590). In *Dumbarton v. Franklin* (19 N. H. 257) it was held that in the absence of evidence to the contrary a jury might find parties to be married on evidence that they had cohabited and acknowledged themselves to be man and wife; but that these facts, of themselves, do not constitute marriage.

### 2. MARRIAGEABLE AGE

Males, 14; females, 13 (Sup., p. 438).

### 3. THE MARRIAGE LICENSE

a. **Requirement.**—All parties proposing to be joined in marriage shall give notice to the official who issues the license (588-89).

b. **Where obtained.**—From the clerk of the town in which either party dwells. If both are non-residents of the state, from the clerk of the town in which the marriage is to be celebrated, or if there is no clerk in such place, the clerk of any adjoining town (588).

c. **Advance notice, objections, etc.**—An advance notice of five days is required, but the license may be issued earlier upon request of the court (Sup., p. 439).

d. **Parental consent.**—Required for males under 18 and females under 16. Parties desiring to marry below these ages, and their parents or guardians, may apply in writing to a justice of the superior court or court of probate and the license may be issued only on his order, for "special cause." Marriages below these ages, unless confirmed thereafter, if contracted without the consent of the court, may be annulled on suit by the incapable party. **Penalties.**—For issuing a license to persons under these ages in violation of this provision the clerk is subject to a fine of not over \$200, or imprisonment for not over six months, or both. Any person who knowingly makes a false statement as to age with intent to influence the clerk to issue a license for such a person, is subject to a similar punishment (Sup., p. 439).

e. **Form of license.**—The license contains the facts required to be stated in the notice of intention, as shown in 3h below (Sup., p. 439).



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f. Record of license.—Required (588).

g. Life of license.—No provision.

h. Other requirements and prohibitions.—The applicants must cause notice of their intention, showing their names, color, occupation, birthplace, residence and age; their condition, whether single or widowed, whether first or second marriage; and the names, residence, color, occupation and birthplace of their parents, to be entered in the office of the clerk (588). A license must not be issued for the marriage of an epileptic, feeble-minded, insane person or idiot unless the woman is over 45 years of age, and should any question arise as to whether such condition exists each person shall procure an affidavit from a licensed physician other than the person seeking the license, showing that the parties do not suffer from any of these disabilities (Laws, 1915, p. 218). Penalties.—Any person who knowingly violates any of the provisions of the Act forbidding the issuance of a license to such mentally defective persons, or any person who swears falsely to any of the affidavits mentioned in that Act, is subject to a fine of from \$50 to \$500, or imprisonment for not over 30 days, or both (Laws, 1915, p. 218).

### 4. SOLEMNIZATION

a. The celebrant.—A justice of the peace in his county; a minister of the gospel who has been ordained according to the usages of his denomination, residing in this state and in regular standing with the denomination to which he belongs; any such minister residing out of the state who has been authorized to solemnize marriage within the state by a commission issued by the Governor with advice of the council, or who has a pastoral charge wholly or partially in the state, if the solemnization is within his parish; the Society of Friends according to their customs. Penalty.—For solemnizing marriage when not legally authorized to do so, a fine of not over \$300, one half to the use of the complainant (589).

b. Presentation of license.—Required. Penalty.—For solemnizing a marriage without having first received the license, the celebrant is subject to a forfeit of \$60 to the use of the parent or guardian who may sue (589).

c. Form of ceremony.—No provision.

d. Other requirements and prohibitions.—Celebrants are forbidden to solemnize the marriage of a person under the age of consent without the required permission (Sup., p. 439). Penalty.—A fine of not over \$200, or imprisonment not over six months, or both.

Celebrants may not solemnize the marriage of mentally defective persons prohibited from marrying (Laws, 1915, p. 217). Penalty.—A fine of from \$50 to \$500, or imprisonment not over 30 days, or both (Laws, 1915, p. 218).

Any person making any false statement with intent to induce a celebrant to solemnize the marriage of a person below the age of consent is subject to a fine of not over \$200, or imprisonment not over six months, or both (Sup., p. 439).

### 5. THE MARRIAGE RECORD

a. Certificates and their distribution.—A copy of the celebrant's record containing full data as to the parties shall be forwarded, within six days, to the clerk of the town in which the marriage intention was recorded (585). Penalty.—For failure to do so, a fine of not over \$100 (587).

Residents going out of the state to marry shall file a certificate of their marriage with the clerk of the town where either of them lived prior to the marriage within seven days after their return. Penalty.—Persons failing to file this certificate are liable to a penalty of \$10 (589).

b. Local record.—The clerk shall keep a record of all marriages (586) and shall annually furnish to the selectmen a transcript of his records for publishing with the reports of the town officer (173). Whenever a certificate is filed with him of a marriage of any person not a resident of the town or state where the marriage is solemnized he shall forward, within 10 days, an attested copy to the clerk of the

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town in which either of the persons so married resides, whether in this state or in any other state (Sup., p. 438). **Penalties.**—For failure by the clerk to keep a record, a fine of not over \$100 (587); for failure to forward the attested copy, not over \$50 (Sup., p. 438).

c. **State record.**—The clerk shall make monthly reports of his records to the state registrar which shall also show the names, residence and official station of all persons who have neglected to make the required return (586). **Penalty.**—Not over \$100 (587).

### 6. INTER-STATE RELATIONS

No provision.

### 7. CERTAIN OTHER PROHIBITIONS

The marriage of a man to a woman under 45 years of age, either of whom is epileptic, an imbecile, feeble-minded, an idiot or insane (Laws, 1915, p. 217).

## NEW JERSEY

**Authorities.**—Compiled Statutes of 1910; Supplement of 1915 (references are to its pages unless otherwise specified); Laws through 1918.

### 1. COMMON LAW MARRIAGES

Such marriages are recognized. It is provided that nothing in the revision of 1912 shall be deemed to render any common law marriage, or other marriage otherwise lawful, invalid by reason of the failure to take out a license, as provided (p. 926). See also *Atlantic City Railway Company v. Goodin*, 62 N. J. L. 394; *State v. Thompson*, 76 N. J. L. 197; *Chamberlin v. Chamberlin*, 68 N. J. Eq. 736.

### 2. MARRIAGEABLE AGE

Males, 18; females, 16.<sup>1</sup> Marriages under these ages, if not confirmed after arriving at them, may be annulled on suit of the non-aged party (C. S., p. 2022).

### 3. THE MARRIAGE LICENSE

a. **Requirement.**—Persons intending to marry should first obtain a marriage license (924).

b. **Where obtained.**—From the registrar of vital statistics, and if there be no such officer, from the clerk of the city or town or the assessor of the township in which the female resides; if either is a non-resident of the state, from a proper officer of the municipality in which the male party resides; if both are non-residents, from the proper officer of the municipality in which the marriage is to take place (924); in cities of the first class, from the city clerk (928).

Both parties are required to appear before the issuer of licenses.

c. **Advance notice, objections, etc.**—Application must be made 48 hours before the issuance of the license (Laws, 1917, p. 484), and the ceremony must not be performed until at least 24 hours after the license has been issued (924), but in case of arrest on certain criminal charges the marriage may be performed immediately after obtaining the license (928). **Penalty.**—Violation by the issuer of the 48 hour provision is a misdemeanor (Laws, 1917, p. 484).

d. **Parental consent.**—Required for males under 21 and females under 18 (925). It must be in writing, certified in the presence of at least two reputable witnesses. If either parent or the guardian is of unsound mind, his or her consent is not

<sup>1</sup> This is confirmed by one correspondent and denied by another, the latter holding that there is no provision, and referring to Sec. 8 of Chap. 199, Revision of 1912.

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required (926). If the male applicant has been arrested on the charge of sexual intercourse with a woman of good repute, resulting in pregnancy, the license to marry such woman may be issued without parental consent (926). The marriage of a girl under 16 against the will of her parents is void and the man is guilty of a high misdemeanor (C. S., p. 1784).

e. *Form of license.*—The license names the contracting parties and gives their residences. In case both a civil and religious ceremony is desired the license shall be issued in duplicate (925).

f. *Record of license.*—No provision.

g. *Life of license.*—30 days (925).

h. *Other requirements and prohibitions.*—The contracting parties must swear to the truth of the facts respecting the legality of the proposed marriage, which testimony shall be verified by a witness of legal age residing in the municipality in which the license is issued, and the license shall be issued only if after said testimony it appears to the issuer that no legal impediment to the marriage exists (925). No license shall be issued when either party is under the influence of an intoxicating liquor or a narcotic drug, or who is an imbecile, epileptic or of unsound mind, nor to any person who has been an inmate of an insane asylum or institution for indigent persons unless it appears that such person has been satisfactorily discharged (924). *Penalties.*—To issue a license without the affidavit required is a misdemeanor (Laws, 1917, p. 484). Any applicant who knowingly makes false answers to the issuer's inquiries shall be deemed guilty of perjury (926).

### 4. SOLEMNIZATION

a. *The celebrant.*—A justice of the supreme court; the chancellor and each vice chancellor; a judge of a court of common pleas; recorder, police justice, or mayor; a minister of any religion or any religious organization of which either party is a member (923-24).

b. *Presentation of license.*—Required (924). *Penalty.*—For solemnizing without it the celebrant is subject to imprisonment for not over six months, or a fine not exceeding \$500, or both (926).

c. *Form of ceremony.*—The certificate must show the names of at least two witnesses (925). Religious societies may solemnize marriage according to their customs (924).

d. *Other requirements and prohibitions.*—The celebrant is authorized to administer oaths or affirmations and to require the parties to make true answers to any inquiries he may make of either of them in order to ascertain whether any legal impediment exists. *Penalty.*—Any person wilfully making false answers shall be deemed guilty of perjury (926).

### 5. THE MARRIAGE RECORD

a. *Certificates and their distribution.*—The certificate which shows the name, age, parentage, color, birthplace, occupation, residence and condition (whether widowed, single or divorced) of each party, is to be filled in by the celebrant and returned by him within five days to the local registrar of vital statistics, or if there is no such officer, to the city clerk or township assessor, or to the clerk of any county board of health (926). *Penalties.*—For failure to return the certificate within the required time, \$50 (927); for making a false certificate, \$100 (926).

b. *Local record.*—No provision except in regard to certificates of marriage for which the license was issued in another city or town. Any officer who receives such a certificate shall send a duplicate of it, within 24 hours, to the proper officer in the place of issuance. These duplicates must show where and when the original certificates were issued and must be themselves filed by the officer receiving them (929). *Penalty.*—For failure to forward duplicate certificates, as required, \$50 (929).

c. *State record.*—The local registrar of vital statistics or other designated

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officer where the marriage is performed shall transmit monthly to the state bureau of vital statistics all of the certificates of marriage received by him (927).

### 6. INTER-STATE RELATIONS

No provision.

### 7. CERTAIN OTHER PROHIBITIONS

The marriage of a person who knows himself to be infected with a venereal disease (Laws, 1917, p. 52).

## NEW MEXICO

**Authorities.**—Code of 1915 (references are to its sections); Laws through 1917.

### 1. COMMON LAW MARRIAGES

Such marriages are apparently recognized but there has been no decision on the subject.

### 2. MARRIAGEABLE AGE

Males, 18; females, 15 (3431). Marriages under these ages are declared invalid (3431) but may be confirmed by the parties after arriving at the marriageable age (3434).

### 3. THE MARRIAGE LICENSE

**a. Requirement.**—Parties intending marriage should obtain a license (3435).

**b. Where obtained.**—From the county clerk of the county wherein the marriage is to take place. When the parties reside more than ten miles from the county seat they may make application before any person authorized to perform marriage or administer oaths, who shall certify the contents of the application to the county clerk and the license may be transmitted (Laws, 1915, Chap. 31).

**c. Advance notice, objections, etc.**—No provision.

**d. Parental consent.**—Required for all under 21 years of age by virtue of the fact that the prescribed form of license provides for parental consent "where either party is under age" (3442). The age of 21 is established in section 2554.

**e. Form of license.**—It must contain the names, ages, nativity and residence of the parties, a statement that no legal impediment exists and a form for parental consent (3442).

**f. Record of license.**—Required (3442).

**g. Life of license.**—No provision.

**h. Other requirements and prohibitions.**—None.

**i. Penalties not shown above.**—Any county clerk who shall fail to comply with the provisions relating to the license and certificate shall be fined from \$50 to \$100, or imprisoned from 10 to 60 days, or both (3443).

### 4. SOLEMNIZATION

**a. The celebrant.**—A civil magistrate; an ordained clergyman (3426); any religious society in accordance with its customs (3428).

**b. Presentation of license.**—Required (3437).

**c. Form of ceremony.**—No provision. The certificate provides, however, for the signatures of two witnesses (3442).

**d. Other requirements and prohibitions.**—The celebrant is forbidden to celebrate the marriage of a male under 21 or a female under 18 without parental consent (3431). It is provided "that nothing in this chapter shall excuse any person from exercising the same care, in satisfying himself as to the legal qualifications of

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any parties desiring him to perform the marriage ceremony, now required by law in addition to the authority conferred by the license aforesaid" (3437).

For solemnizing the marriage of persons under the marriageable age or within the prohibited degrees the celebrant is subject to a fine of not less than \$50 (3432).

### **5. THE MARRIAGE RECORD**

a. **Certificates and their distribution.**—The celebrant must certify the marriage to the county clerk within 90 days after solemnization (3438). The secretary of a religious society shall file a certificate with the probate court (3428).

b. **Local record.**—The county clerk shall immediately cause the certificate to be recorded (3438). Penalty.—See 3i.

c. **State record.**—No provision.

d. **Penalties not shown above.**—Any celebrant who fails to comply with the provisions of the chapter on marriage relating to the license and certificate shall be fined from \$50 to \$100, or imprisoned from 10 to 60 days, or both (3443).

Any person who attempts to deceive any officer or person authorized to perform the marriage ceremony in order to obtain a license or to be married contrary to the law is subject to a similar penalty (3443).

### **6. INTER-STATE RELATIONS**

Marriages valid where celebrated are valid in New Mexico (3429).

### **7. CERTAIN OTHER PROHIBITIONS**

Males under 21 are forbidden to marry without parental consent given personally or in writing and authenticated before competent authority (3427).

## **NEW YORK**

**Authorities.**—Bliss' Code Civil Procedure, 1913; Birdseye's Consolidated Laws of 1918 (references are to its pages unless otherwise indicated); Laws of 1918.

### **1. COMMON LAW MARRIAGES**

Common law marriages are recognized in New York (*Ziegler v. Cassidy's Sons*, 220 N. Y. 98).

### **2. MARRIAGEABLE AGE**

Eighteen years. Marriages under this age may be annulled on action by the non-aged party or a parent or guardian or next friend provided they have not been confirmed after reaching the prescribed age (Bliss, Sec. 1744).

### **3. THE MARRIAGE LICENSE**

a. **Requirement.**—A license must be obtained (1859).

b. **Where obtained.**—From the clerk of the town or city where the woman resides or if she is a non-resident, where the marriage is solemnized (1859); from a justice of the peace under certain conditions of residence (Laws, 1918, p. 881).

Both parties must appear before the issuer. See 3h below.

c. **Advance notice, objections, etc.**—No provision.

d. **Parental consent.**—Required for males under 21 and females under 18. The consent of both parents if living, or if either or both are dead, of the living parent or the guardian must be given in writing. If one parent has been missing and has not been seen or heard of for a period of one year preceding the application, although diligent inquiry has been made to learn his whereabouts, the clerk may

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issue the license upon the sworn statement and consent of the other parent. If the parents are divorced the consent of the parent having legal custody is sufficient. If there is no parent or guardian living the issuer shall require the written consent of the person under whose care the minor may be. The parents, guardians or other persons must personally appear before the clerk and execute the consent, if they are residents of New York and physically able to do so. If non-residents, consent may be executed and acknowledged without the state (1862-63). **Penalty.**—Any issuer who fails to require the consent provided for is subject to a fine of \$100 (1863).

**e. Form of license.**—It shows the names and residence of the parties and includes an abstract of the facts ascertained by the clerk, as shown in 3h below (1860).

**f. Record of license.**—Required and open to public inspection (1864). **Penalty.**—See 5b below.

**g. Life of license.**—No provision.

**h. Other requirements and prohibitions.**—Each of the contracting parties must sign a verified statement or affidavit before the issuer showing the names, ages, residence, color, country of birth, name of father and maiden name of mother, occupation and number of marriage, and containing the following declaration: "I have not to my knowledge been infected with any venereal disease or if I have been so infected within five years I have had a laboratory test within that period which shows that I am now free from infection from any such disease." The clerk shall embody in the statement whether either applicant has been previously married and whether the former husband or wife is living or dead, whether either applicant is divorced, and if so when and where the divorce was granted, together with a statement that no legal impediment exists as to the right of each applicant to enter into the marriage state. He may require identification and may examine witnesses as to any material inquiry (1862). **Penalties.**—Any clerk who issues a license for the marriage of a person not legally competent to marry without first taking the required affidavits is liable to a fine of \$100 (1863). See also 5b below. Any person who in any statement or affidavit wilfully and falsely swears in regard to any matter or fact as to the competency of the contracting parties shall be deemed guilty of perjury (1864).

### 4. SOLEMNIZATION

**a. The celebrant.**—A mayor, recorder, city magistrate, police justice or police magistrate of a city; the city clerk of a city of the first class of over 1,000,000 inhabitants, in his office, or any of his deputies or a regular clerk designated by him for such purpose; a justice or judge of a court of record or municipal court; a police justice of a village or a justice of the peace except in cities containing more than 100,000 and less than 1,000,000 inhabitants; a clergyman or minister of any religion; the leader or any of the three assistant leaders of the Society for Ethical Culture in the City of New York, having its principal office in the Borough of Manhattan, or the leader of the Society for Ethical Culture in the Borough of Brooklyn; Quakers and people of other denominations having as such any particular mode of solemnizing marriage. The city clerk of a city of the first class of over 1,000,000 inhabitants may solemnize a marriage upon a license issued by himself (1857-59; Laws, 1918, p. 1989).

**b. Presentation of license.**—Required (1859). For solemnizing a marriage without production of a license, the celebrant is subject to a fine of from \$50 to \$500 or imprisonment for not over one year (1864).

**c. Form of ceremony.**—The parties must declare in the presence of the celebrant and at least one attending witness that they take each other as husband and wife (1859). Quakers and other denominations having any particular mode of solemnization may solemnize marriage in the manner heretofore practiced in their societies (1859). Marriage may be solemnized by a written contract of

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marriage, signed by both parties and at least two witnesses, stating the place of residence of each of the parties and witnesses and the date and place of marriage, and acknowledged by the parties and witnesses in the manner required for the acknowledgment of a conveyance of real estate before a judge or court of record and recorded within six months after its execution in the office of the clerk of the county in which the marriage is solemnized (1857).

d. Other requirements and prohibitions.—If a celebrant solemnizes a marriage knowing that either party is legally incompetent, he is liable to a fine of from \$50 to \$500 or imprisonment for not over one year (1864). For knowingly solemnizing an incestuous marriage he is subject to a fine of from \$50 to \$100 to which may be added imprisonment for not over six months (1835). Any person who procures or aids in the solemnization of such a marriage is punishable in like manner (1835).

### **5. THE MARRIAGE RECORD**

a. Certificates and their distribution.—Celebrants must return the license and abstract of facts with a certificate of the marriage to the issuer on or before the tenth day of the following month (1861). Penalty.—For failure to make such return a fine of from \$25 to \$50 (1861).

b. Local record.—The license and certificate must be recorded by the clerk (1865). On or before the fifteenth day of each month the town or city clerk shall file in the office of the county clerk of the county in which said town or city is situated the original of each affidavit, statement, consent, license and certificate. He need not file any of these documents until the return is made (1865). The county clerk shall keep a copy and index each paper (1866). Penalty.—Any town, city or county clerk who shall violate any of the provisions of the article covering licensing and record is subject to a fine of not over \$100 (1867).

c. State record.—The county clerk shall transmit quarterly to the state department of health all of the original papers filed with him and also all original contracts of marriage (1866).

### **6. INTER-STATE RELATIONS**

A marriage valid where contracted is recognized in New York (*Thorp v. Thorp*, 43 Am. Rep. 189; *Van Voorhis v. Brintnall*, 40 Am. Rep. 505).

### **7. CERTAIN OTHER PROHIBITIONS**

To take or harbor a girl under 18 years of age for the purpose of marriage without the consent of her parents or guardian constitutes abduction (5603).

## **NORTH CAROLINA**

Authorities.—Pell's Revisal 1908 (references are to its sections unless otherwise specified); Gregory's Supplement of 1913; Laws through 1917.

### **1. COMMON LAW MARRIAGES**

Such marriages are not recognized (*State v. Wilson*, 121 N. C. 650). Marriage is not invalid, however, because solemnized without a license (*Maggett v. Roberts*, 112 N. C. 71).

### **2. MARRIAGEABLE AGE**

Males, 16; females, 14 (2082). Marriages under this age may be subsequently ratified (*Sims v. Sims*, 121 N. C. 300; *State v. Parker*, 106 N. C. 711). It is a misdemeanor to contract marriage with a female under 14 years of age (3368).

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### 3. THE MARRIAGE LICENSE

a. **Requirement.**—No one shall solemnize a marriage without a license for it (2086).

b. **Where obtained.**—From the register of deeds of the county in which the marriage is to take place (2086).

c. **Advance notice, objections, etc.**—No provision.

d. **Parental consent.**—Required for anyone under 18 years of age. It must be given in writing (2088). **Penalties.**—For knowingly or without reasonable inquiry issuing a license without parental consent where required, a forfeit of \$200 payable to the parent (2090). Any person who obtains a license for the marriage of a minor under the age of 18 by misrepresentation shall be fined not over \$50, or imprisoned not over 30 days, or both (3371).

e. **Form of license.**—The license must show the names, residence, age, race and parentage of the parties; whether their parents are living or dead and their residence; parental consent if required; and that there is no legal impediment (Sup., 2089; Laws, 1917, p. 101).

f. **Record of license.**—The license must be recorded at issuance (2092). **Penalty.**—For failure to record it, \$200 to any person who shall sue (2092). See also *Maggett v. Roberts*, 108 N. C., 174.

g. **Life of license.**—Sixty days (Laws, 1917, p. 101).

h. **Other requirements and prohibitions.**—If it appears to the issuer probable that there is any legal impediment he shall have power to administer an oath to the applicant touching the legal capacity of the parties (2088). **Penalties.**—For knowingly or without reasonable inquiry issuing a license for a marriage to which there is any lawful impediment, a forfeit of \$200 (2090). It is a misdemeanor knowingly to issue a license for a miscegenetic marriage (3370).

### 4. SOLEMNIZATION

a. **The celebrant.**—A justice of the peace; an ordained minister of any denomination or a minister authorized by his church; the Society of Friends (Sup. 2081).

b. **Presentation of license.**—Required (2086). **Penalty.**—For solemnizing without such license or after its expiration, the celebrant shall forfeit \$200 to any person who may sue for it (2087).

c. **Form of ceremony.**—There must be consent presently to take each other as husband and wife freely, seriously and plainly expressed by each in the presence of the other and in the presence of the celebrant, and subsequent declaration by the celebrant that the parties are man and wife (2081). The certificate must be signed by one or more witnesses (Sup., 2089). Marriage may be solemnized among members of the Society of Friends according to their custom (2081).

d. **Other requirements and prohibitions.**—It is a misdemeanor knowingly to solemnize a miscegenetic marriage (3370).

### 5. THE MARRIAGE RECORD

a. **Certificates and their distribution.**—The license and certificate must be returned by the celebrant to the register of deeds within 60 days after solemnization (Laws, 1917, p. 101). **Penalty.**—For failure to make return within the specified time the celebrant must forfeit \$200 to any person who may sue therefor (2087).

b. **Local record.**—The certificate, with the license, shall be recorded and filed by the register. **Penalty.**—For failure to make this record within 10 days, \$200 to any person who may sue (2092).

c. **State record.**—No provision.

### 6. INTER-STATE RELATIONS

No provision.



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### 7. CERTAIN OTHER PROHIBITIONS

By miscegenetic marriage in North Carolina is meant marriage between a white person and a negro or Indian or person of Indian or negro descent to the third generation inclusive, or between a Cherokee of Robeson County and negro or person of negro descent. Such marriages are void, as are marriages of persons "incapable of contracting from want of will or understanding" (Sup., 2083).

## NORTH DAKOTA

**Authorities.**—Compiled laws of 1913 (references are to its sections unless otherwise indicated); Laws through 1917.

### 1. COMMON LAW MARRIAGES

Such marriages are not recognized. The words of the statute, "the marriage relation shall be entered into only as provided by law," are mandatory and prohibitive (*Schumacher v. Great Northern Co.*, 23 N. Dak. 231).

### 2. MARRIAGEABLE AGE

Males, 18; females, 15 (4358).

### 3. THE MARRIAGE LICENSE

a. **Requirement.**—No one shall solemnize a marriage without a license for it (4361).

b. **Where obtained.**—From the county judge of the county in which one of the parties resides or the county to which it is attached for judicial purposes (4361).

c. **Advance notice, objections, etc.**—No provision.

d. **Parental consent.**—Required for males under 21 and females under 18. It must be given personally or in writing attested by two witnesses, one of whom must appear before the judge and make oath that he saw the parent or guardian sign the consent (4362). **Penalty.**—See 3h below.

The issuer must require an affidavit from some disinterested credible person showing that the parties are over the ages of 21 or 18 years, unless such parental consent is obtained (4375).

A marriage when contracted without parental consent by a male under 18 or a female under 15 may be annulled on suit of the parents or guardian at any time before, or by the minor within four years after the minor arrives at the prescribed age, provided it is not then confirmed (4368).

e. **Form of license.**—The license shows the names, residence and ages of the contracting parties (4363).

f. **Record of license.**—Required (4362; 4364). **Penalty.**—For neglecting to make this record the issuer is subject to a fine of from \$50 to \$500 (9727).

g. **Life of license.**—No provision.

h. **Other requirements and prohibitions.**—The issuer must inquire of the applicant on oath relative to the legality of the marriage, and may examine other witnesses upon oath if he deems it necessary. He must also require each party to file an affidavit setting forth whether either or both have been divorced and he must require that a certified copy of any divorce decree be filed with him (Laws, 1917, p. 215). Each party to the marriage must file with the issuer an affidavit of at least one duly licensed physician other than the person seeking the license showing that the contracting parties are not feeble-minded, imbecile, epileptic, insane or drunkards or afflicted with pulmonary tuberculosis in its advanced stages, and in addition the affidavit as to the male contracting party shall show that he is not afflicted with any contagious venereal disease. The issuer shall require an affidavit of some disinterested credible person showing

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that the parties are not habitual criminals (4375). The affidavits may be taken before any officer authorized to administer oaths, and if satisfactory to the judge are considered to be of the same force and effect as if taken before him (4362). **Penalty.**—Any person who violates any of the provisions of the law relating to mental and physical condition, or any person swearing falsely to any statement in the affidavit is subject to a fine of from \$50 to \$500, or imprisonment not over 30 days, or both (4378). It is further provided that any one swearing falsely to the statements in such affidavit shall be deemed guilty of perjury (4375).

The issuer is forbidden to grant a license to any one under the influence of intoxicating liquor (4376); for a marriage which would contravene the decision of any divorce decree (Laws, 1917, p. 215). For knowingly issuing a license for a miscegenetic marriage he is subject to imprisonment for not over two years, or a fine of not over \$2,000, or both (9584).

**General penalty.**—For signing or issuing a license except as prescribed by law the issuer is subject to a fine of from \$50 to \$500 (9727).

### 4. SOLEMNIZATION

a. **The celebrant.**—A judge of a court of record in his jurisdiction; a justice of the peace within his jurisdiction; an ordained minister of the gospel or priest of any church; the Society of Friends (4361). **Penalty.**—For attempting to solemnize marriage when not legally authorized to do so the offender is subject to imprisonment for from 90 days to one year, or a fine of from \$100 to \$500, or both (9729).

b. **Presentation of license.**—Required (4361). **Penalty.**—For solemnizing a marriage without requiring its presentation the celebrant is subject to a fine of from \$50 to \$500 (9727).

c. **Form of ceremony.**—The certificate must be signed by two witnesses in addition to having the signature of the celebrant (4361). Indian marriages contracted according to the Indian customs are valid (4365). The Society of Friends may solemnize marriage according to their customs (4361).

d. **Other requirements and prohibitions.**—Celebrants are forbidden to solemnize the marriage of epileptic, imbecile, feeble-minded or insane persons, common drunkards or habitual criminals or persons afflicted with pulmonary tuberculosis in its advanced stages or any contagious venereal disease unless the woman is over 45 years of age (4374), or persons under the influence of an intoxicating liquor or narcotic drug (4376). **Penalty.**—Any person violating the provisions of the law relating to the marriage of mental or physical defectives is subject to a fine of from \$50 to \$500, or imprisonment for not over 30 days, or both (4378).

For knowingly solemnizing a miscegenetic marriage the celebrant is subject to imprisonment for not over two years, or a fine of not over \$2,000, or both (9585).

### 5. THE MARRIAGE RECORD

a. **Certificates and their distribution.**—The certificate and license shall be returned to the issuer by the celebrant within 30 days (4361). **Penalty.**—For non-compliance a fine of from \$50 to \$500 (9728).

b. **Local record.**—The certificate is to be recorded by the county judge (4364). **Penalty.**—For failure to make this record within 30 days he is subject to a fine of from \$50 to \$500 (9727).

c. **State record.**—No provision.

### 6. INTER-STATE RELATIONS

Marriages valid where contracted are valid in North Dakota (4366).

### 7. CERTAIN OTHER PROHIBITIONS

A miscegenetic marriage, as prohibited in North Dakota, is a marriage between a white person and a person of one-eighth or more negro blood. Such marriages

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are void (9582-83). Persons who are mentally or physically afflicted, as shown under 3h above, are forbidden to marry (4373).

### OHIO

**Authorities.**—General Code of 1910 (references are to its sections unless otherwise specified); Supplement of 1916; Laws through 1917.

#### 1. COMMON LAW MARRIAGES

Such marriages are recognized (*Umbenbower v. Labus*, 85 Ohio, 238).

#### 2. MARRIAGEABLE AGE

Males, 18; females, 16 (11181). In a case of pregnancy, the juvenile court, with the consent of the parent or guardian, may authorize issuance of a license when either or both parties are under the specified ages (Sup., 11181-1). Marriages under these ages are invalid unless confirmed after arriving at such age (*Shafter v. State*, 20 Ohio, 1).<sup>1</sup>

#### 3. THE MARRIAGE LICENSE

a. Requirement.—Banns must be published or a license must be obtained (11186).

b. Where obtained.—From the probate judge of the county where the female resides (11186).

Both parties must appear before the issuer, if a license is obtained. If on evidence of a reputable physician in active practice and residing in the county of issuance the judge is satisfied that either party is unable to appear by reason of illness or other physical disability, then the license may be granted on application and oath of the other party, but the person unable to appear must file an affidavit setting forth the desired information (11188).

c. Advance notice, objections, etc.—No general provision, but if there is publication of banns in place of obtaining a license, as per 3a above, such publication must take place on two different days of public worship, the first at least 10 days before the marriage in the county in which the female resides (11186).

d. Parental consent.—Required for males under 21 and females under 18 not previously married. It must be given personally before the issuer, or in writing certified by two witnesses, one of whom must appear before the issuer and verify the signature under oath (11190; 8023). If the parent is absent from the county in which the license must issue he must personally appear before the judge of a court of record in the county in which he is at the time domiciled and give consent in writing, which consent must be attested by two witnesses and forwarded to the issuer (11191). Penalty.—See 3h.

If there is no parent or guardian, the judge of the juvenile court may give consent (Sup., 11181-1).

e. Form of license.—It must state the penalty for failure to return (11189).

f. Record of license.—Required (1594).

g. Life of license.—No provision.

h. Other requirements and prohibitions.—Each person for whom a license is sought shall personally appear in the probate court in the proper county and make application and shall state upon oath the name, age, residence, place of birth, occupation, father's name if known, and the mother's maiden name of each party, and the number of times either party has been previously married, giving

<sup>1</sup> In this decision, which was rendered before the marriageable age for females was raised to 16 years, the age referred to for females is 14 years.

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the maiden name of the bride in case she is a widow or divorced; also the name of the probable celebrant; and if the judge is satisfied that there is no legal impediment he shall grant the license (11188). No license shall be granted when either applicant is an habitual drunkard, epileptic, imbecile or insane, or under the influence of an intoxicating liquor or narcotic drug (11187). **Penalty.**—For issuing a marriage license in any other manner than as provided, a forfeit of not over \$1,000 for the use of the party aggrieved (11193).

### 4. SOLEMNIZATION

**a. The celebrant.**—A justice of the peace in his county; the mayor of a city or village in any county where such city or village wholly or partly lies; the superintendent of an institution for the deaf and dumb; the judge of the municipal court of Columbus (Sup., 1558-51); the several religious societies according to their rules and regulations; an ordained or licensed minister of any religious society or congregation within the state who has produced his credentials to the probate judge of any county in which he officiates and obtained a license authorizing him to solemnize marriage (11182). He must produce his license to the judge of the probate court in each county in which he solemnizes marriage, whereupon the judge shall enter his name upon record as a person authorized to solemnize marriages (11184). **Penalty.**—Whoever not being legally authorized to do so attempts to solemnize marriage shall be fined \$500 and imprisoned not more than six months (12922).

**b. Presentation of license.**—Any celebrant who solemnizes a marriage without banns or license shall be fined not over \$1,000 and imprisoned not more than six months (12921).

**c. Form of ceremony.**—No provision.

**d. Other requirements and prohibitions.**—In case of marriage without a license the celebrant must satisfy himself that intention of marriage has been published and that parental consent has been obtained, when required, either by acknowledgment in the presence of such celebrant or by the certificate of the parent or guardian, attested by one or more credible witnesses who must appear before the celebrant and verify the consent (11197).

### 5. THE MARRIAGE RECORD

**a. Certificates and their distribution.**—Every marriage certificate shall be transmitted, within 30 days, by the celebrant to the probate judge of the county. **Penalty.**—For failure to make the return to the issuer within 30 days the offender is subject to a fine of not over \$50 (11189, 11195, 11196).

**b. Local record.**—The certificate must be recorded (11195).

**c. State record.**—No provision.

### 6. INTER-STATE RELATIONS

No provision.

## OKLAHOMA

**Authorities.**—Revised Laws 1910, known as the Harris-Day Code (references are to its sections unless otherwise specified); Supplement of Session Laws through 1917.

### 1. COMMON LAW MARRIAGES

Such marriages are recognized (Reaves v. Reaves, 15 Okla. 240).

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### 2. MARRIAGEABLE AGE

Males, 18; females, 15. The marriage of persons under these ages is forbidden but may be authorized by the courts in settlement of suits for bastardy or seduction (3885). When either party is incapable of contracting marriage for want of age, the marriage may be annulled on action brought by the parent or guardian or by the incapable party, unless confirmed after the incapacity ceases (4974).<sup>1</sup>

### 3. THE MARRIAGE LICENSE

a. Requirement.—No one shall contract marriage without a license (3886).

b. Where obtained.—From the judge or clerk of the county court in which the marriage is to take place (3887).

Apparently it is not required that either of the parties shall appear before the issuer. The application may be sworn to by any person having knowledge of the facts, if competent to make and take an oath (3886).

c. Advance notice, objections, etc.—No provision.

d. Parental consent.—Required for males under 21 and females under 18. It must be given either in person or in writing, acknowledged before a properly authorized person (3885). Penalty.—See 3h below.

e. Form of license.—It shows the names, ages and residences of the parties, and fixes the date of return (3888).

f. Record of license.—Required and open to public inspection (3891). Penalty.—For concealing any record of a license the issuer is subject to a fine of from \$100 to \$500, or imprisonment for from 30 days to one year, or both (3897).

g. Life of license.—No explicit provision, but the license must be returned to the issuer within 30 days from the issuance (3888).

h. Other requirements and prohibitions.—The issuer, upon application in writing signed and sworn to before him, setting forth the names, ages and residences of the parties and that such persons or either of them are not disqualified or incapable of entering into the marriage relation, or are not of the relationship prohibited by law, being satisfied of the truth and sufficiency of such application and that there is no legal impediment to the marriage, shall issue the license (3887). If the issuer is in doubt as to the legal capacity of the parties to contract marriage he shall require additional evidence and may swear and examine witnesses or require affidavits, and unless satisfied of the legality he shall not issue the license (3892). Penalty.—For knowingly issuing a license contrary to the provisions of the act concerning marriage the issuer is subject to a fine of from \$100 to \$500, or imprisonment for from 30 days to one year, or both (3897).

### 4. SOLEMNIZATION

a. The celebrant.—A justice of the supreme court; judge of the district, superior, or county court, or justice of the peace; a preacher or minister of the gospel; a priest or other ecclesiastical dignitary of any denomination who has been duly ordained and authorized by the church to which he belongs to preach the gospel and who has filed a copy of his credentials for record in the office of the judge of the county court of the county in which he resides (3889).

b. Presentation of license.—Required (3889). Penalty.—See first penalty under 4d.

c. Form of ceremony.—There must be a formal ceremony solemnized in the presence of at least two competent, adult witnesses (3889).

<sup>1</sup> A correspondent writes, however, that where there are marriages contracted by parties under the ages specified and these marriages are followed by cohabitation, the courts are very loath to interfere and declare such marriages void without some equitable adjustment of property rights. "Our courts will sustain the validity of these marriages—in every case where they can, providing the marriage is followed by cohabitation. Many marriages have been annulled by action taken immediately after the contract has been entered into: but where the action is taken by one of the contracting parties, he or she must make a clear case or the marriage will be sustained."

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d. **Other requirements and prohibitions.**—The celebrant shall not solemnize a marriage unless he has good reason to believe the contracting parties are the identical persons named in the license and that there is no legal impediment or objection to the marriage (3889). **Penalties.**—For knowingly solemnizing marriage contrary to the provisions of the chapter on marriage the celebrant is subject to a fine of from \$100 to \$500, or imprisonment for from 30 days to one year, or both (3897). For knowingly solemnizing marriage between persons prohibited from intermarrying a fine of not over \$500 and imprisonment from one to five years (3896).

### 5. THE MARRIAGE RECORD

- a. **Certificates and their distribution.**—The celebrant shall certify the marriage upon the license and return it without delay to the issuer (3890).
- b. **Local record.**—The certificate must be recorded by the judge or clerk (3891).
- c. **State record.**—No provision.

### 6. INTER-STATE RELATIONS

No provision.

### 7. CERTAIN OTHER PROHIBITIONS

Marriage between a white person and a person of African descent (3894).

## OREGON

**Authorities.**—Lord's Oregon Laws of 1910 (references are to its sections unless otherwise specified); Laws through 1917.

### 1. COMMON LAW MARRIAGES

Such marriages are not recognized. It has been held by the courts that the marriage relation cannot be entered into except in accordance with the law requiring that the consent of the parties to become husband and wife must be declared in the presence of an authorized celebrant and two witnesses (Holmes v. Holmes, 1 Sawyer 99).

### 2. MARRIAGEABLE AGE

Males, 18; females, 15 (7016). Marriages under these ages are voidable at the suit of the non-aged party (7018).

### 3. THE MARRIAGE LICENSE

a. **Requirement.**—Before any persons can be joined in marriage a license must be produced (7027).

b. **Where obtained.**—From the county clerk of the county in which the female resides (7027).

c. **Advance notice, objections, etc.**—No provision.

d. **Parental consent.**—Required for males under 21 and females under 18 (7028). It must be in writing. If there is no parent resident within the state and the female has resided within the county wherein the license is applied for for a period of six months, the license may be issued without consent (7028). The applicant must file an affidavit of some person other than the parties seeking the license showing the facts in regard to age and residence (7029). **Penalty.**—See 3h.

e. **Form of license.**—It shows the names of the parties (7027).

f. **Record of license.**—Required (7030).

g. **Life of license.**—No provision.

h. **Other requirements and prohibitions.**—The applicant must file a certificate from a physician authorized to practice medicine within the state, made under oath within the preceding 10 days, showing that the male party is free from

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contagious venereal disease (Laws, 1915, p. 350). The issuer shall procure the addresses of the male party and of the affiant (Laws, 1911, p. 343). **Penalties.**—For issuing a license contrary to the provisions of the chapter on marriage, imprisonment for not more than one year, or a fine of from \$100 to \$500 (7031). Any physician who knowingly makes a false statement in the certificate required shall be punished by the revocation of his license (Laws, 1915, p. 350).

For knowingly issuing a license for the marriage of a white person and negro, Chinese, Kanaka, or Indian the issuer is subject to imprisonment from three months to one year and a fine of from \$100 to \$1,000 (2165).

### 4. SOLEMNIZATION

a. **The celebrant.**—Any judicial officer of the state anywhere within the jurisdiction (7019); a minister or priest of any church in the state who is properly authorized by his church to solemnize marriage and who has filed evidence of his authority with the clerk of the county in which he resides or in which the marriage is solemnized, which if approved by the clerk shall be recorded; or a non-resident minister who shall have filed this evidence in the county in which the marriage is solemnized, no minister being required to file credentials in more than one county (Laws, 1913, p. 540); any religious organization (7026). **Penalty.**—For undertaking to solemnize marriage when not authorized to do so, imprisonment for not more than one year, or a fine of from \$100 to \$500 (7032).

b. **Presentation of license.**—Required (7027). **Penalty.**—See 4d.

c. **Form of ceremony.**—The parties must assent or declare in the presence of the celebrant and at least two witnesses that they take each other as husband and wife (7020). Religious organizations may solemnize marriage according to their established form (7026).

d. **Other requirements and prohibitions.**—Any celebrant who solemnizes a marriage contrary to the provisions of the marriage law is subject to imprisonment for not more than one year, or a fine of from \$100 to \$500 (7032). For knowingly solemnizing the marriage of a white person with a negro, Chinese, Kanaka, or Indian he is subject to imprisonment from three months to one year and a fine of from \$100 to \$1,000 (2165).

### 5. THE MARRIAGE RECORD

a. **Certificates and their distribution.**—The celebrant shall within one month file a certificate with the issuer of the license and also one with the county clerk of the county where the marriage took place (7022). If the marriage is solemnized by a minister this certificate must show, among other matters specified, the county clerk with whom his credentials are recorded (Laws, 1913, p. 540). In case the certificate is not returned within the specified time, the clerk shall notify the parties interested (Laws, 1911, p. 343). **Penalty.**—For failure to return the certificate to the issuer within the specified time the celebrant is subject to a forfeit of from \$10 to \$50 for every five days of neglect (Laws, 1911, p. 343).

b. **Local record.**—The certificate must be filed and recorded by the county clerk (7023).

c. **State record.**—The county clerk shall report monthly to the secretary of the county board of health who shall keep a complete record of all marriages (4698-99).<sup>1</sup> The state board of health has charge of vital statistics (4687). **Penalty.**—Any person who violates any of the provisions of the Act relating to the state board of health shall be fined from \$10 to \$100 (4700).

### 6. INTER-STATE RELATIONS

No statutory provision. It has been held that marriage contrary to the laws of nature as generally recognized in Christian countries, such as involve polygamy

<sup>1</sup> The state board of health, as a matter of fact, receives these reports monthly.

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and incest, and marriages which the local law making power has declared void are exceptions to the rule that marriage valid where solemnized is valid everywhere (*Sturgis v. Sturgis*, 51 Oreg. p. 10).

### 7. CERTAIN OTHER PROHIBITIONS

The marriage of a white person with a negro or Mongolian of one-quarter blood is forbidden and void (7017).

It is a criminal offense to take a girl under 16 years of age, against the will of her parents or guardian, for the purpose of marriage (2085).

## PENNSYLVANIA

**Authorities.**—Purdon's Digest, 1903; Supplement of 1915; Laws through 1917. References are to pages of the volumes named.

### 1. COMMON LAW MARRIAGES

Such marriages are recognized (*Commonwealth v. Stump*, 53 Pa. 132; *Richard v. Brehm*, 73 Pa. 140).

### 2. MARRIAGEABLE AGE

No statutory provision. The common law age for females, 12 years, applies (*Ward's Estate*, 30 Pittsburgh L. J., 394), and presumably also the common law age for males, 14 years.

### 3. THE MARRIAGE LICENSE

**a. Requirement.**—No person within the state shall be joined in marriage unless a license shall have been obtained for that purpose (Sup. 6586).

**b. Where obtained.**—From the clerk of the orphans' court in the county where the marriage is to take place (Sup. 6586) or where either party resides (Dig. 2442). Or the parties may appear before a magistrate, alderman or justice of the town or county "where either party resides and in the county where the license is desired" and make oath to the required facts, and upon receipt of their statement subscribed and sworn to, the clerk may grant the license (Sup. 6586-7).

By implication both parties must appear before the clerk or the official to whom application is made (Sup. 6585). For fuller reference see 3h below.

**c. Advance notice, objections, etc.**—No advance notice is required. Provision is made for the hearing of objections without delay or expense to the applicants (Sup. 6587).

**d. Parental consent.**—Required for any one under 21 years (Sup. 6585). It must be given personally before the clerk or certified under the hand of the parent, attested by two adult witnesses, and properly acknowledged. When there is no parent or guardian and the judge of the orphans' court is absent or not accessible, the clerk may appoint a guardian "pro hac vice" (Sup. 6586).

**e. Form of license.**—The license authorizes the marriage of the persons named. There is a special form of license for persons intending to solemnize their own marriage (Sup. 6586).

**f. Record of license.**—Required and open to public inspection (Dig. 2442; Sup. 6587). **Penalty.**—For violation, a fine of not over \$50; for preventing any person from making a copy of the entries for the purpose of newspaper publication, a similar penalty (Dig. 2442).

**g. Life of license.**—Sixty days (Sup. 6587).

**h. Other requirements and prohibitions.**—One or both of the parties shall be identified to the satisfaction of the issuer (Dig. 2441), who shall inquire of them either separately or together, on oath or affirmation, relative to the legality of the



## LAWS BY STATES

contemplated marriage, the age of the parties, parental consent in case of minors, any prior marriage and its dissolution, and if there be no legal objection he shall grant the marriage license (Sup. 6585).

No license to marry shall be issued except upon written and verified application, which shall show the names, color, occupation, birthplace, residence, ages of the parties; the number of the marriage and that neither of the contracting parties is afflicted with a transmissible disease, together with the names, residence, color, occupation and birthplace of their parents, including the maiden name of the mother and such other facts as may be necessary to determine whether any legal impediment to the proposed marriage exists (Sup. 6587).

No license to marry shall be issued where either of the contracting parties is an imbecile, epileptic, or person of unsound mind or under guardianship as a person of unsound mind; nor to any male person who has been an inmate, within five years, of any county asylum or home for indigent persons unless it satisfactorily appears that the cause of such condition has been removed and that such male applicant is physically able to support a family; or if at the time of making application either of the contracting parties is under the influence of an intoxicating liquor or narcotic drug (Sup. 6587). **Penalty.**—For issuing or signing a marriage license in any other manner than as provided, a fine of not over \$1,000 payable to and for the use of the party aggrieved (Dig. 2443).

i. **Penalties not shown above.**—If any alderman, magistrate or justice shall wilfully make false return to the clerk, he must pay not over \$1,000 to the use of the party aggrieved (Dig. 2445).

### 4. SOLEMNIZATION

a. **The celebrant.**—No provision. But all celebrants and clerks of religious societies must report their names and residence to the secretary of the board of health, who shall register them. If the celebrant moves to another place, he must report that fact within 30 days (Dig. 4095).

b. **Presentation of license.**—Any one who solemnizes a marriage or acts as attesting witness, unless a license has been obtained, shall forfeit \$100 (Dig. 2443).

c. **Form of ceremony.**—No provision.

d. **Other requirements and prohibitions.**—For solemnizing a marriage when either party is intoxicated, the celebrant is liable to a fine of \$50 and imprisonment at the discretion of the court for not over 60 days (Dig. 2445).

### 5. THE MARRIAGE RECORD

a. **Certificates and their distribution.**—A certificate is to be returned by the celebrant to the issuer within 30 days (Dig. 2443). **Penalty.**—For failure to make the required return within the specified time, \$50 (Dig. 2443). The return must be made by the parties in the case of a marriage solemnized without a celebrant (Sup. 6587).

All celebrants or clerks of religious societies must also make a report every three months to the secretary of the local board of health (in Philadelphia, the health officer) of all marriages solemnized by them (Dig. 4096).

b. **Local record.**—Return is to be recorded by the issuer of the license (Sup. 6587). **Penalty.**—For failure to record, \$50 (Dig. 2443).

c. **State record.**—It is the duty of the state registrar to collect and preserve all records of marriages (Sup. 7305), local registrars being appointed by him for the purpose (Sup. 7300).<sup>1</sup>

### 6. INTER-STATE RELATIONS

No provision.

<sup>1</sup> There is no requirement that marriages be reported to the state registrar or to his local representatives. We are informed, however, that in practice the latter copy the records of the clerk of the orphans' court.

## AMERICAN MARRIAGE LAWS

### RHODE ISLAND

**Authorities.**—Revision of General Laws of 1909 (references are to its pages unless otherwise specified); Laws through 1917-18.

#### 1. COMMON LAW MARRIAGES

Such marriages are recognized (Chace Petitioner, 26 R. I. 353-54; Williams v. Herrick, 21 R. I. 401).

#### 2. MARRIAGEABLE AGE

No statutory provision. The common law ages apply—14 for males and 12 for females (Capwell v. Capwell, 21 R. I. 101).

#### 3. THE MARRIAGE LICENSE

a. **Requirement.**—Persons intending to be joined together in marriage must first obtain a license (Laws, 1909-10, p. 164).

b. **Where obtained.**—From the clerk of the town or city in which the persons reside, or, if residents of different towns, from the towns in which they respectively reside; if not residents of the state, from the town in which the marriage is to be solemnized (Laws, 1909-10, p. 165); in the city of Providence from the registrar of births, marriages and deaths (849).<sup>1</sup>

Each party must appear before the above mentioned clerk or assistant clerk (Laws, 1909-10, p. 165). See also 3h below.

c. **Advance notice, objections, etc.**—If a woman is not a resident of the state she must obtain the license at least five days previous to the marriage. There is no such requirement in case she is a resident (Laws, 1909-10, p. 165). This does not apply to immigrants just arriving (Laws, 1917-18, p. 161).

d. **Parental consent.**—Required for a minor—i. e., under 21 years of age—or any person under the control of a guardian. It must be given in the presence of the clerk in writing (Laws, 1909-10, p. 168).

The license may be issued to any person over 18 years of age who is residing in the state and who has no parent or guardian in the state competent to act, or to any person over 18 years of age who is not a resident of this state and who has no parent or guardian in the United States competent to act; and the town clerk shall have power in such cases to administer the oath relative to these facts: "provided further that such information (i. e., that shown in the application for license) may be given and subscribed by any minor residing in this state upon the consent in writing of the overseer of the poor of the town or city in which such minor resides, or in the presence of the town clerk or city clerk or any clerk employed in the office of the town or city clerk" (Laws, 1909-10, p. 168).

e. **Form of license.**—The license shows the names, residence, age, place of birth and color; parents' names, occupation and birthplace; number of marriage, whether previously divorced and occupation of the groom. It also shows the name of the place in which the marriage is to be solemnized, i. e., the name of the state if the parties are resident, or the name of the town and state if non-resident (Laws, 1909-10, p. 165).

f. **Record of license.**—Required (849).

g. **Life of license.**—No provision.

h. **Other requirements and prohibitions.**—Before a license is issued to a person who has been previously married, such person must present to the clerk an authenticated copy of the decree granting divorce from or a certificate of the death of the person to whom he or she was formerly married or such other proof of these facts as may be satisfactory to the clerk (Laws, 1909-10, p. 165).

<sup>1</sup> Thus two licenses must be obtained when the parties live in different towns of the state.

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Whoever shall give or procure to be given any false information as to the requirements shown in 3d above, or whoever shall be married without duly proceeding as required by the chapter on marriage shall be fined not over \$50 (850). The information contained in the license, as per 3e above, shall be subscribed to in the presence of the clerk or assistant clerk of the town in which the parties respectively reside (Laws, 1909-10, p. 165).

### 4. SOLEMNIZATION

a. **The celebrant.**—A justice of the supreme or superior court; a warden of the town of New Shoreham (846); the Society of Friends; Jewish denominations (847); a minister of the gospel who has obtained a clergyman's license from the clerk of the city in which he resides or, if he is not a resident of the state, under certain conditions from the secretary of the state board of health (Laws, 1909-10, p. 163). The clerks of meetings of the Society of Friends must cause their names and residence to be recorded in the office of the county clerk where they reside (433).

b. **Presentation of license.**—Required of each party (848). **Penalty.**—For solemnizing a marriage without a marriage license, a fine of not over \$1,000, or six months imprisonment (850).

c. **Form of ceremony.**—No provision except that two witnesses are required to be present besides the parties and celebrant (849). The Society of Friends and persons of Jewish religion may solemnize marriage according to their customs and ceremonies (847).

d. **Other requirements and prohibitions.**—If any person has any lawful objection he may state it in writing under his hand to the celebrant, whereupon such celebrant shall proceed no further until such lawful objection be removed (850). **Penalty.**—For solemnizing a marriage which has been lawfully objected to and to which the impediment has not been removed, the celebrant is subject to a fine of not over \$1,000, or imprisonment for six months (850).

For knowingly solemnizing a bigamous marriage, he is subject to imprisonment not more than six months, or a fine of not over \$1,000 (850).

e. **Penalties not shown above.**—For failure by the celebrant to perform any of the duties required of him by the chapter on marriage, he is subject to a fine of not over \$100 (850).

Persons marrying without proceeding as directed in the statutes shall be fined not over \$50.

### 5. THE MARRIAGE RECORD

a. **Certificates and their distribution.**—The celebrant must endorse on the license the fact of marriage and return it on or before the second Monday of the month succeeding the date of marriage to the clerk of the town or city in which the marriage was solemnized (848-49); in Providence, to the registrar of births, marriages and deaths (849). **Penalty.**—See 4e above.

b. **Local record.**—The clerk to whom the endorsed license is sent shall carefully file and preserve it (849). Each month he shall make a certified copy of the record of every marriage either party to which was resident in any other town in the state or in any other state, and transmit it to the clerk or registrar of such town. The clerk or registrar receiving such copy shall record it (434).

c. **State record.**—The town clerks of the several towns or other designated person shall obtain and record all information concerning marriages occurring among the inhabitants of their respective towns, and make annual reports to the secretary of the state board of health, accompanying them with a list of the persons required by law to make returns to them who have neglected to do so (430). The town clerks shall report to the state board all clergymen's licenses and transfers (Laws, 1909-10, p. 164).

d. **Penalties not shown above.**—Any person who wilfully sends to the publisher of a newspaper for publication a fraudulent notice of marriage shall be fined not over \$100 (1280).

## AMERICAN MARRIAGE LAWS

### 6. INTER-STATE RELATIONS

No provision.

### 7. CERTAIN OTHER PROHIBITIONS

The marriage of an idiot or lunatic is void (846).

## SOUTH CAROLINA

**Authorities.**—Code of 1912 (references are to the sections of Vol. I); Laws through 1918.

### 1. COMMON LAW MARRIAGES

Such marriages are recognized (*Freyer v. Freyer*, Richardson's Equity Cases, 92 ff.).

### 2. MARRIAGEABLE AGE

No provision (3745). But no license shall be issued to persons under the ages of 18 for males and 14 for females, and since a license is essential to the validity of a marriage, these are indirectly the marriageable ages.

### 3. THE MARRIAGE LICENSE

a. **Requirement.**—It is unlawful to contract marriage without a license (3744); but "nothing herein contained shall render any marriage illegal without a license" (3749).

b. **Where obtained.**—From a judge of probate; in certain counties from the clerk of the court (3745).

c. **Advance notice, objections, etc.**—No provision.

d. **Parental consent.**—Required for any one under 18 years. It must be given in writing (3745).

e. **Form of license.**—It shows the age, residence, race and nationality of the parties (3746).

f. **Record of license.**—No provision. But licenses that are used are to be returned and recorded (3747).

g. **Life of license.**—No provision.

h. **Other requirements and prohibitions.**—There must be a statement under oath to the effect that the contracting parties are legally capable to marry, and showing their full names, ages and residence (3745). The license must not be issued for the marriage of a person under the marriageable age (3745).

### 4. SOLEMNIZATION

a. **The celebrant.**—An officer authorized to administer oaths; a minister of the gospel; a Jewish rabbi (3751).

b. **Presentation of license.**—Required (3744). **Penalty.**—For solemnizing a marriage without the production of a license the celebrant is subject to a fine of from \$25 to \$100, or imprisonment from 10 to 30 days (3744).

c. **Form of ceremony.**—No provision.

d. **Other requirements and prohibitions.**—Any celebrant who knowingly solemnizes a miscegenetic marriage is subject to a fine of not less than \$500 or imprisonment for not less than 12 months, or both (Vol. II, 385).

### 5. THE MARRIAGE RECORD

a. **Certificates and their distribution.**—Within 15 days the marriage certificate must be returned by the celebrant to the issuer of the license (3747).

b. **Local record.**—The certificate, when received, must be recorded (3747).

c. **State record.**—No provision.

## LAWS BY STATES

### 6. INTER-STATE RELATIONS

No provision.

### 7. CERTAIN OTHER PROHIBITIONS

The marriage of idiots and lunatics (3743) and of a white person with an Indian, negro, mulatto, Mestizo, or half-breed (3757) is forbidden and the latter marriages are void.

## SOUTH DAKOTA

**Authorities.**—Compiled laws of 1913 (references are to Civil Code sections unless otherwise specified); Session Laws through 1917.

### 1. COMMON LAW MARRIAGES

Such marriages are recognized. Consent must be followed by solemnization or by mutual assumption of marital duties (34). See also *Svendsen v. Svendsen*, 37 S. D. 353, 158 N. W. 410.

### 2. MARRIAGEABLE AGE

No provision, but males over 18 and females over 15 are declared capable of marrying (36).

### 3. THE MARRIAGE LICENSE

- a. Requirement.—Previous to any marriage a license must be obtained (46).
- b. Where obtained.—From the clerk of the circuit court of the county where the marriage is to be solemnized (46).
- c. Advance notice, objections, etc.—No provision.
- d. Parental consent.—Required for males under 21 and females under 18 (10; 47). It must be given in writing and acknowledged or proved to be genuine (50). Penalty.—See 3h below.

Marriages under the age of legal consent, when contracted without parental consent, may be annulled on action by the parent or guardian at any time before the non-aged person has reached such age, or on suit of such minor within four years after that time, provided the marriage has not been subsequently confirmed (62).

e. Form of license.—It shows the names and residence of the contracting parties and that there is no legal impediment (Laws, 1915, p. 479).

f. Record of license.—Required (49).

g. Life of license.—No provision.

h. Other requirements and prohibitions.—Unless the clerk is acquainted with the age and condition of the parties he must take the oath of competent and disinterested witnesses on the subject (48). The license must not be granted where either party is under the marriageable age nor where the condition of either party is such as to disqualify him from making any other civil contract (47); nor for a miscegenetic marriage (Laws, 1913, p. 406). Penalties.—It is a misdemeanor to grant a license for a miscegenetic marriage or for a marriage contrary to the provisions of the law (51; Laws, 1913, p. 405).

### 4. SOLEMNIZATION

a. The celebrant.—A justice of the supreme court; judge of the circuit or county court; justice of the peace; mayor; a minister of the gospel or priest of any denomination; among Indians by the peace makers, their agents or the superintendent of Indian affairs (45). Marriage may also be contracted by declaration (53). See 4c below.

b. Presentation of license.—If a marriage is solemnized without a license the

## AMERICAN MARRIAGE LAWS

contracting parties and all persons aiding in the marriage are guilty of a misdemeanor (51).

c. **Form of ceremony.**—The certificate must state that the marriage was solemnized in the presence of the subscribing witnesses—number not shown (Laws, 1915, p. 480). Persons marrying without a celebrant must jointly make a written declaration of the marriage substantially showing their names, ages, residence, the fact of marriage, the time of marriage, and that the marriage has not been solemnized. This declaration must be subscribed by the parties and attested by at least three witnesses and acknowledged and recorded in like manner as grants of real property (53). Indians may be married according to the Indian customs.

d. **Other requirements and prohibitions.**—The celebrant must ascertain to his satisfaction the identity of the parties, their real and full names, places of residence, that they are of sufficient age to be capable of contracting marriage, and the name and residence of the witness or two witnesses if more than one is present (54).

It is a misdemeanor to solemnize the marriage of a minor under the age of legal consent, or of an idiot or insane person; or to solemnize a miscegenetic marriage or any marriage to which there is any legal impediment (Penal Code 436; Laws, 1913, p. 406).

## 5. THE MARRIAGE RECORD

a. **Certificates and their distribution.**—The celebrant must return the marriage certificate to the issuer within 30 days (Laws, 1915, p. 481). Declarations of marriage must be filed with the clerk of the circuit court where the parties reside (58). In case of marriage by a denomination which dispenses with the services of a celebrant the parties themselves must return the certificate (59). **Penalty.**—For failure to make the required return the celebrant, or where there is no celebrant the husband, is subject to a fine not over \$50 (56-59; Laws, 1915, p. 481).

b. **Local record.**—The certificate is to be recorded and filed by the clerk (60; Laws, 1915, p. 481).

c. **State record.**—Each county clerk is required to send to the superintendent of vital statistics, each month, a record of the marriages performed in his county (Section 9905 of the Code of 1919).

## 6. INTER-STATE RELATIONS

Marriages valid where contracted are valid in South Dakota (44).

## 7. CERTAIN OTHER PROHIBITIONS

A miscegenetic marriage in South Dakota means the marriage of a white person with an African, Corean, Malayan, or Mongolian. Such marriages are void (Laws, 1913, p. 405).

## TENNESSEE

**Authorities.**—Shannon's Code of 1917 (references are to its sections); Laws through 1917.

## 1. COMMON LAW MARRIAGES

Such marriages are not recognized. The provisions for license and a certain form of solemnization are mandatory (Smith v. Bank, 7 Cates 12; Bashaw v. State, 1 Yer. 177). We are advised, however, by a recognized authority in Tennessee that "it would seem that the doctrine of estoppel can be successfully invoked in many cases, thus rendering the common law presumptions of marriage effective."

## **LAWS BY STATES**

### **2. MARRIAGEABLE AGE**

No statutory provision. The common law ages are recognized—14 for males and 12 for females (Governor v. Rector, 10 Hum. 57).

### **3. THE MARRIAGE LICENSE**

a. Requirement.—Before being joined in marriage the parties shall produce a license to the celebrant (4191).

b. Where obtained.—From the clerk of the county court either where the female resides or where the marriage is to be solemnized (4191).

c. Advance notice, objections, etc.—No provision.

d. Parental consent.—Required for any one under 16 years. It must be in writing (4192a-1). Penalties.—Issuing a license without the required consent is a misdemeanor (4192a-2). Fraudulently signing or using any false document purporting to be parental consent is a misdemeanor (4192a-3).

e. Form of license.—It shows the name of the celebrant and the names of the parties (4191).

f. Record of license.—Required (5888).

g. Life of license.—No provision.

h. Other requirements and prohibitions.—The clerk may issue the license unless he knows that one of the parties is incapable of marriage. A bond in the sum of \$1,250 is required, payable to the state, with sufficient security, conditioned that there is no cause to obstruct the marriage, for which penalty the person aggrieved may sue (4192). Penalty.—For knowingly granting a license to an incapable person, a forfeit of \$500 for the use of the person suing (4195). This offense shall also constitute a misdemeanor (4197).

### **4. SOLEMNIZATION**

a. The celebrant.—A justice of the peace; judge or chancellor; governor; speaker of the Senate; speaker of the House of Representatives; a regular minister of the gospel of any denomination; a Jewish rabbi (4189). A justice of the peace cannot solemnize marriages outside of his own county (Bashaw v. State, 1 Yer. 177).

b. Presentation of license.—Required (4191).

c. Form of ceremony.—The parties must respectively declare in the presence of the celebrant that they accept each other as man and wife (4190).

d. Other requirements and prohibitions.—Any celebrant who solemnizes the marriage of "any two persons not capable thereof" shall forfeit \$500 to the person suing (4196). Such offense shall also constitute a misdemeanor (4197).

### **5. THE MARRIAGE RECORD**

a. Certificates and their distribution.—The celebrant shall return the license, with the date of marriage endorsed thereon, to the clerk who issued it within 30 days from solemnization (4193). Penalty.—For failure to do so he is subject to a fine of from \$10 to \$50 (4193).

b. Local record.—The license when endorsed and returned as per 5a, is to be recorded immediately and filed (5888).

c. State record.—No provision.

### **6. INTER-STATE RELATIONS**

No statutory provision; the courts have declared that the manner and form of marriages solemnized in foreign countries shall be recognized as valid, but that this rule does not apply to the capacity of the parties (State v. Bell, 7 Bax. 9).

### **7. CERTAIN OTHER PROHIBITIONS**

Marriages between white persons and negroes (4186).

## AMERICAN MARRIAGE LAWS

### TEXAS

**Authorities.**—Vernon's Sayles' Civil Statutes of 1914 (references are to its sections unless otherwise specified); Civil and Criminal Supplement of 1918; White's Penal Code of 1911.

#### 1. COMMON LAW MARRIAGES

Such marriages are recognized (Harlan v. Harlan, 125 S.W. 950; Berger v. Kirby, 153 S.W. 1130, and Grigsby v. Reib, 153 S.W. 1124).

#### 2. MARRIAGEABLE AGE

Males, 16; females 14. Marriage by persons under these ages is forbidden (4609).

#### 3. THE MARRIAGE LICENSE

- a. **Requirement.**—Any one desirous of marrying shall apply for a license (4610).
- b. **Where obtained.**—From the clerk of any county court (4610).
- c. **Advance notice, objections, etc.**—No provision.
- d. **Parental consent.**—Required for males under 21 and females under 18. It must be given in person or in writing, signed and acknowledged before an officer authorized to take acknowledgments. In cases where the minor has neither parent nor guardian the county judge of the county in which the minor resides may give consent. If the issuer is doubtful as to the age of persons representing themselves to be of age, he must require a certificate under oath from the parent or guardian or some person other than the contracting parties (4611).
- e. **Form of license.**—It authorizes the marriage (4610).
- f. **Record of license.**—Required (4612).
- g. **Life of license.**—No provision.

#### 4. SOLEMNIZATION

- a. **The celebrant.**—A judge of a district or county court or justice of the peace; a regularly licensed or ordained minister of the gospel or a Jewish rabbi (4608).
- b. **Presentation of license.**—For solemnizing a marriage without a marriage license the celebrant is subject to a fine of from \$50 to \$500 (White's Penal Code, p. 335a).
- c. **Form of ceremony.**—No provision.

#### 5. THE MARRIAGE RECORD

- a. **Certificates and their distribution.**—The celebrant must endorse the fact of solemnization on the license and return it to the clerk of the county court within 60 days (4612).
- b. **Local record.**—The clerk must record the returned license endorsed as per 5a above (4612).
- c. **State record.**—No provision.

#### 6. INTER-STATE RELATIONS

No provision.

#### 7. CERTAIN OTHER PROHIBITIONS

Marriages between white persons and negroes or their descendants are unlawful and void (4613).



## LAWS BY STATES

### UTAH

**Authorities.**—Compiled Laws of 1907 (references are to its sections unless otherwise specified); Laws through 1917.

#### 1. COMMON LAW MARRIAGES

Such marriages are not recognized. A marriage is void unless solemnized by an authorized person. But want of authority will not invalidate a marriage if the parties believe the celebrant to be authorized (1184; 1187).

#### 2. MARRIAGEABLE AGE

Males, 16; females, 14. Marriages below these ages are prohibited and void (1184).

#### 3. THE MARRIAGE LICENSE

a. **Requirement.**—No marriage shall be solemnized without a license (1189).

b. **Where obtained.**—From the county clerk of the county in which the female resides; but if she is of full age or a widow and applies for it in person or in writing it may be obtained from the clerk of any county (1189).

c. **Advance notice, objections, etc.**—No provision.

d. **Parental consent.**—Required for males under 21 and females under 18, not before married. Consent must be personally given or certified in writing to the clerk, attested by two or more subscribing witnesses, and proved by the oath of one of them, administered by any authorized person; provided that if such oath is administered by a justice of the peace or other officer having no seal and residing out of the county in which the license is to be issued, the oath and consent shall not be received unless the signature and official capacity of the officer shall be certified by the county clerk of the county in which he resides and attested by the seal of the clerk (1190). **Penalties.**—See 3h below, last sentence. Any person who falsely personates or forges the name of a parent or guardian is subject to imprisonment for not over three years (1195).

e. **Form of license.**—No provision.

f. **Record of license.**—No clear provision regarding all licenses. For licenses that are used see 5b below.

g. **Life of license.**—No provision.

h. **Other requirements and prohibitions.**—When the parties are unknown to the clerk a license shall not be issued until an affidavit is made before him by the applicant saying that there is no lawful reason in the way of the marriage (1191). **Penalties.**—The person making this affidavit or any subscribing witness, if he swears falsely therein, is guilty of perjury (1191).

For knowingly issuing a license for a prohibited marriage the issuer is subject to imprisonment for not over two years, or a fine of not over \$1,000, or both, and removal from office (1197). For wilfully issuing a license "contrary to his duty as herein prescribed" he is subject to a fine of not over \$1,000 (1197).

#### 4. SOLEMNIZATION

a. **The celebrant.**—A justice of the peace; judge of the district court or of the supreme court or mayor; a minister of the gospel or priest of any denomination in regular communion with any religious society (1188). **Penalty.**—For solemnizing marriage when not authorized to do so imprisonment for not over three years (1195).

b. **Presentation of license.**—For solemnizing a marriage without a license the celebrant is subject to imprisonment for from one to 12 months, or a fine of not over \$1,000, or both (1194). See also 4d below.

## AMERICAN MARRIAGE LAWS

c. **Form of ceremony.**—The certificate must show the names of two or more witnesses who were present at the marriage (1192).

d. **Other requirements and prohibitions.**—For knowingly or without a license solemnizing a prohibited marriage the celebrant is subject to imprisonment for not over three years, or a fine of not over \$1,000, or both (1196).

### 5. THE MARRIAGE RECORD

a. **Certificates and their distribution.**—The celebrant shall within 30 days return to the issuer a certificate of the marriage (1192). **Penalty.**—Failure to do so is a misdemeanor (1192).

b. **Local record.**—The license and certificate must be filed and recorded by the clerk (1193).

c. **State record.**—No provision.

### 6. INTER-STATE RELATIONS

Marriages valid where solemnized are valid in Utah (1186).

### 7. CERTAIN OTHER PROHIBITIONS

Marriage is forbidden with an idiot, lunatic or person afflicted with syphilis or gonorrhoea which is uncured, or with a person subject to epileptic fits—provided that the last qualification shall not apply to a female over the age of 45 years—or between a white person and a negro or Mongolian. Such marriages are void (1184).

## VERMONT

**Authorities.**—General Laws of 1917 (references are to its sections).

### 1. COMMON LAW MARRIAGES

Such marriages are not recognized (*Morrill v. Palmer*, 68 Vt. 1).

### 2. MARRIAGEABLE AGE

No statutory provision. The common law ages apply—14 for males and 12 for females (*Fisher v. Bernard*, 65 Vt. 663). But the marriage of a person under 16 years of age may be annulled on action by a parent or guardian or next friend of the non-aged minor unless ratified after reaching the "age of consent"<sup>1</sup> (3547-48).

### 3. THE MARRIAGE LICENSE

a. **Requirement.**—Before solemnizing a marriage the celebrant shall require a license (3517).

b. **Where obtained.**—From the town clerk of the town where the groom resides, or if he is not a resident of the state, of the town where the bride resides. If both are non-residents, of the town where the marriage is solemnized (3517); from the county clerk in the case of persons residing in an unorganized town or gore (3772). **Penalty.**—A town clerk who knowingly issues a license upon the application of a person residing in any other town in the state, or a county clerk who knowingly issues a license upon application of a person not within his jurisdiction is subject to a fine of from \$20 to \$50 (3792).

c. **Advance notice, objections, etc.**—No provision. See 4d below.

d. **Parental consent.**—Required for minors—i. e., males under 21 and females under 18. It must be given in writing. **Penalties.**—For violation the issuer is subject to a fine of not more than \$20. Any person who aids in procuring a mar-

<sup>1</sup> We are advised by a Vermont lawyer that though the statute is ambiguous, and the point has not been covered by any decision, the age 16 is probably referred to.

## LAWS BY STATES

riage license by false personation of the parents or guardian is subject to a fine of not more than \$500 (3795).

e. **Form of license.**—The license contains the sworn declaration of marriage shown in 3h below, the clerk's certification, and the certificate of the officer administering the oath (3791). The date of issuance must be shown.

f. **Record of license.**—Required (3790).

g. **Life of license.**—No provision.

h. **Other requirements and prohibitions.**—The applicant must sign and make oath to a declaration of intention which shows the names, residence, color, place of birth, number of marriage, whether divorced, father's name and mother's maiden name for each party, and the occupation of the groom (3790-91). **Penalties.**—For issuing a license without first requiring this declaration a fine of from \$20 to \$50 (3792). Any applicant who makes a material misrepresentation in this declaration is guilty of perjury (3793).

The clerk is forbidden to issue a license to a resident of another state unless he is satisfied that the marriage would not be prohibited in that state. **Penalty.**—For issuing a license to non-residents with the knowledge that they would be prohibited from marrying by the laws of their own state, a fine of not more than \$100 (3794).

The clerk is forbidden to issue a license when either party is an idiot, non compos, a lunatic or distracted person or under guardianship, without the written consent of the guardian; or, in the case of a non compos person not under guardianship or of a town pauper, without the written consent of the selectman or overseer of the poor of the town where such person resides and which is liable for his support (3795).

Any clerk who dates a license falsely shall be fined not over \$20 (3517).

### 4. SOLEMNIZATION

a. **The celebrant.**—A justice of the peace in his county; a minister of the gospel residing in the state and authorized to solemnize marriage by the discipline of his denomination; the Society of Friends in the manner heretofore used by them (3516). **Penalty.**—For undertaking to solemnize marriage when not authorized to do so, imprisonment for not more than six months, or a fine of from \$100 to \$300 (3518).

b. **Presentation of license.**—Required (3517). **Penalty.**—For solemnizing the marriage before a license is produced, a fine of not less than \$10 (3797).

c. **Form of ceremony.**—No provision.

d. **Other requirements and prohibitions.**—If a marriage is to be solemnized in a town in which neither party resides, it shall not be solemnized until five days after the license has been issued, but this provision shall not apply to persons enlisted in the military or naval service of the United States (3517).

### 5. THE MARRIAGE RECORD

a. **Certificates and their distribution.**—The celebrant shall return the executed license to the issuer within 10 days (3796). **Penalty.**—For failure to do so he is subject to a fine of not less than \$10 (3796).

Any male resident marrying out of the state must file a certificate within 60 days with the clerk of the town where he resides (3799). **Penalty.**—For failure to do so, a fine of not less than \$10 (3799).

b. **Local record.**—The clerk shall file the certificate (3775-76). On the first day of each month he must make a certified copy of each marriage certificate filed in his office, either party to which was a resident of another town, and transmit it to the clerk of such town, who shall file it (3777).

c. **State record.**—The clerk shall transmit monthly to the secretary of the state board of health a certified copy of each marriage certificate (3779). **Penalty.**—For failure to transmit, a fine of not less than \$20 (3781).

## AMERICAN MARRIAGE LAWS

### 6. INTER-STATE RELATIONS

If a person who intends to remain a resident of Vermont and who is forbidden by its laws to marry, contracts marriage elsewhere, the marriage is void in Vermont. If a person who intends to remain a resident of some other jurisdiction and who is forbidden to marry by its laws, contracts marriage in Vermont, the marriage is void (3514-15).

### 7. CERTAIN OTHER PROHIBITIONS

The marriage is forbidden of a person who has been told by a physician that he or she is afflicted with gonorrhoea or syphilis, without assurance or certification from a legally qualified practitioner of medicine or surgery that he or she is free from such disease (7035). **Penalty.**—Imprisonment not more than two years, or a fine of not more than \$500 (7035).

## VIRGINIA

**Authorities.**—Pollard's Code of 1904 (references are to its sections unless otherwise specified); Supplement of 1910; Supplement of 1916; Laws through 1918.

### 1. COMMON LAW MARRIAGES

Such marriages are not recognized. No attempted marriage, if it took place in the state, is valid unless it was under license and solemnized according to the statutes. There is an exception relating to ante-bellum marriages of negroes (*Offield v. Davis*, 100 Va. 250).

### 2. MARRIAGEABLE AGE

Males, 14; females, 12. Such marriages are void without legal process if the parties separated during such non-age and do not cohabit afterwards (2254).

### 3. THE MARRIAGE LICENSE

a. **Requirement.**—Every marriage in the state shall be under license (2222).

b. **Where obtained.**—From the clerk of the circuit court of the county or of the corporation, or of the hustings court of the corporation in which the female usually resides. In case she is a non-resident, by such clerk in the county or corporation in which the marriage is to be solemnized; or, if the office of the clerk be vacant or if from any cause the clerk is unable to issue the license, by the judge of the circuit court or mayor of the corporation, who shall report to the clerk (2216).

c. **Advance notice, objections, etc.**—No provision as to advance notice. Persons knowing that an applicant for a license is mentally or physically disabled, as shown in No. 7 below, may appear before the clerk and produce evidence showing that the license should not be issued (Laws, 1918, p. 473). The parties may appeal to the court at their own cost (Laws, 1918, p. 474).

d. **Parental consent.**—Required for any one under 21 years of age. It must be given personally to the issuer or in writing subscribed by a witness who shall make oath before the issuer that it was signed and acknowledged in his presence; or in writing, acknowledged before a notary public or other authorized person. If there is no parent or guardian consent may be given by the court (2218). **Penalties.**—If any one swears falsely that the applicant is 21 years of age he shall be guilty of perjury (3741). See also 3f below and 3h, third paragraph.

e. **Form of license.**—It contains a statement of the facts shown in 3h below (Sup. 1910, Sec. 2229).

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**f. Record of license.**—Required (2217). **Penalty.**—For failure to perform any duty required of him under the chapter on marriage the issuer shall forfeit \$10 for each offense (2250).

**g. Life of license.**—No provision.

**h. Other requirements and prohibitions.**—The issuer shall ascertain from the party obtaining the license as near as may be the date and place of the proposed marriage, the full names of both parties, their ages, race, residence and place of birth, whether single, widowed or divorced, the names of their parents and the occupation of the husband (2229).

No one shall issue a license to any applicants either of whom is an habitual criminal, idiot, imbecile, hereditary epileptic or insane person unless the woman is over 45 years of age; or to any person who is afflicted with a contagious venereal disease (See 7 below). The issuer may accept the affidavit of the male applicant as to the fact that he is free from any contagious venereal disease and that he believes the woman to be free therefrom. If he is not satisfied in regard to the mental defects specified he is authorized to follow the recommendation of the chairman of the board of health of his county or city or some duly licensed practicing physician (Laws, 1918, p. 473).

For knowingly issuing a marriage license contrary to law the issuer shall be fined not over \$500 and imprisoned not over one year (3784). Any person who knowingly violates any of the provisions of the act relating to the marriage of mental and physical defectives is subject to a fine of not over \$100, or imprisonment for not over 90 days, or both.

If residents of the state marry elsewhere a certificate verified by the affidavit of any person present may be returned to the clerk of the court of the county or corporation in which the husband resides, or if he is a non-resident in which the wife resides (2231).

### 4. SOLEMNIZATION

**a. The celebrant.**—A minister who has produced his credentials and given bond in some county or corporation, as provided by law; one or more other persons resident in any county whom the court may deem it expedient to appoint, such persons to give the same bond as is required of a minister (2219-20); any religious society having no ordained minister, according to its custom (2221). **Penalty.**—For solemnizing marriage without being authorized by law to do so the offender is subject to imprisonment for not over one year and a fine of not over \$500 (3785).

**b. Presentation of license.**—For solemnizing a marriage without a license the celebrant is subject to a fine of not over \$500 and imprisonment for not over one year (3785).

**c. Form of ceremony.**—No provision.

**d. Other requirements and prohibitions.**—Celebrants are forbidden to solemnize the marriage of persons laboring under the mental or physical disabilities shown in 7 below (Laws, 1918, p. 474). **Penalty.**—See 3h above, third paragraph.

For solemnizing a miscegenetic marriage the celebrant is subject to a forfeit of \$200, of which the informer shall have one-half (3789).

Any celebrant who exacts a greater fee than the \$1 allowed him by law shall forfeit to the party aggrieved \$50 (2223).

### 5. THE MARRIAGE RECORD

**a. Certificates and their distribution.**—The celebrant shall, within 30 days, return the certificate of marriage to the issuer. **Penalty.**—For failure to do so a fine of from \$10 to \$20 (Sup. 1910, Sec. 2229). The condition of his bond shall also be broken (2232). For making a false certificate, \$100 to \$500 (3739).

If any person upon whose information any marriage record is made shall give false information he shall be fined from \$50 to \$500 (3740).

## AMERICAN MARRIAGE LAWS

The clerk shall annually furnish a list of all licenses which have not been returned to the commonwealth attorney who shall have such persons as he may see proper summoned before the grand jury to ascertain the names of the celebrants failing to make the return (Sup. 1910, Sec. 2229).

b. **Local record.**—The clerk shall record the certificate within 20 days, and file it (2230). **Penalties.**—For failure to record see 3f above. For making a false record a fine of from \$100 to \$500 (3739).

c. **State record.**—The clerk shall transmit annually to the auditor of public accounts a copy of his register of marriages and so much of his record made at the time of issuing the license as is not contained in the register, distinguishing the licenses issued on which the certificate has not been returned and the licenses with such certificates (2239). **Penalty.**—See 3f above.

### 6. INTER-STATE RELATIONS

If residents forbidden to marry by the laws against miscegenetic and incestuous marriages intermarry elsewhere and return to the state to reside, the marriage is governed by the same laws as if it had been solemnized in the state (2253).

### 7. CERTAIN OTHER PROHIBITIONS

The marriage is forbidden of an habitual criminal, idiot, imbecile, hereditary epileptic or insane person, unless the woman is over 45 years of age, and of any person who is afflicted with a contagious venereal disease. The term "habitual criminal" means any person who has been convicted at least three times of a felonious crime, and the term "hereditary epileptic" means any epileptic either of whose parents is or has been an epileptic (Laws, 1918, p. 473).

Marriages between whites and negroes are forbidden and void (3788; 2252).

## WASHINGTON

**Authorities.**—Remington and Ballinger's Codes and Statutes of 1915 (references are to its sections unless otherwise specified); Laws through 1917.

### 1. COMMON LAW MARRIAGES

Such marriages are not recognized, though the decisions have been somewhat conflicting (*Meton v. State Industrial Insurance Dept.*, 177 Pacific, 696; *Potts v. Potts*, 142 Pacific, 448; and in *re Smith's Estate*, 30 Pacific, 1059).

### 2. MARRIAGEABLE AGE

It is unlawful to issue a license to a female under 15 years of age (7164). There is no provision as to males, but it is provided that marriage may be annulled if either party was incapable, through want of legal age, on suit of the non-aged party (7162). Parents cannot maintain an action for annulment (in *re Hollopeter*, 51 Wash. 41).

### 3. THE MARRIAGE LICENSE

a. **Requirement.**—Before any persons may be joined in marriage they must procure a license (7163).

b. **Where obtained.**—From the county auditor (7163). There is no residence territorial restriction.

Neither party is required to appear before the issuer.<sup>1</sup>

<sup>1</sup> The law is silent on this point, but we are informed by a correspondent that in at least one county, if either party does not desire to be present, the application blank is furnished by the issuer and the party returns it after filling it out before a notary public.

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- c. Advance notice, objections, etc.—No provision.
- d. Parental consent.—Required for males under 21 and females under 18. It must be in writing (7164). Penalty.—See 3h below.
- e. Form of license.—No provision.
- f. Record of license.—Required (7166).
- g. Life of license.—No provision.
- h. Other requirements and prohibitions.—Each applicant must file an affidavit with the issuer showing that such applicant is not feeble-minded, imbecile, epileptic, insane, a common drunkard or afflicted with pulmonary tuberculosis in its advanced stage. The affidavit of the male applicant must also show that he is not afflicted with any contagious venereal disease. The issuer must require affidavit from some disinterested party showing that neither party is an habitual criminal and that the female is over 18 and the male over 21, unless parental consent is given (7164). Penalties.—Any one swearing falsely to any statement in the affidavit shall be deemed guilty of perjury (7164). For knowingly violating the provisions as to issuance of license the issuer is subject to a fine of not over \$1,000, or imprisonment for not more than three years, or both (7165). Any person knowingly violating any provision of Section 7164 shall be fined not more than \$1,000, or imprisoned not more than three years, or both (7165).

### 4. SOLEMNIZATION

- a. The celebrant.—A judge of the supreme court or of any superior court; a justice of the peace within his county; a regularly licensed or ordained minister or priest of any church or religious denomination anywhere within this state (7154); any religious organization in accordance with its established forms (7161). Penalty.—For undertaking to solemnize marriage when not authorized to do so a fine of from \$100 to \$500 (7167).
- b. Presentation of license.—For solemnizing marriage contrary to the provisions of the chapter on marriage the celebrant is subject to a fine of from \$100 to \$500 (7167).
- c. Form of ceremony.—The parties must assent or declare in the presence of the celebrant and at least two attending witnesses that they take each other as husband and wife (7156). Penalty.—See 4b above.
- d. Other requirements and prohibitions.—Celebrants are forbidden to solemnize marriages prohibited on account of the mental and physical disabilities shown under 7 below (7153). Penalty.—For violation, a fine of not over \$1,000, or imprisonment for not over three years, or both. The solemnization of the marriage of a person under the age of legal consent, an idiot, insane person, habitual criminal or common drunkard, or a marriage to which the celebrant knows any legal impediment to exist is a gross misdemeanor (2671).  
For solemnizing marriage contrary to the provisions of the chapter on marriage, a fine of from \$100 to \$500 (7167).

### 5. THE MARRIAGE RECORD

- a. Certificates and their distribution.—The celebrant shall file a certificate within three months with the judge of the superior court (county clerk) of the county where the marriage took place (7158). Penalty.—For violation, a fine of from \$25 to \$300 (7160).
- b. Local record.—The judge of the superior court (county clerk) shall file and record the certificate (7159).
- c. State record.—The county auditor shall report all marriage statistics to the secretary of the state board of health quarterly (5422).

### 6. INTER-STATE RELATIONS

No provision.

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### WEST VIRGINIA

**Authorities.**—Hogg's Code of 1913 (references are to its sections unless otherwise specified); Hogg's Supplement of 1918.

#### 1. COMMON LAW MARRIAGES

Such marriages are not recognized (*Beverlin v. Beverlin*, 29 W. Va. 732).

#### 2. MARRIAGEABLE AGE

Males, 18; females, 16. Marriages under these ages may be annulled (3637).

#### 3. THE MARRIAGE LICENSE

a. **Requirement.**—Every marriage shall be under license (3606).

b. **Where obtained.**—From the clerk of the county court of the county in which the female usually resides (3602).

c. **Advance notice, objections, etc.**—No provision.

d. **Parental consent.**—Required for any one under 21 years of age. It must be given personally to the clerk or in writing subscribed by a witness who must make oath before the clerk that the writing was signed and acknowledged in his presence (3603). **Penalty.**—See 3h below.

e. **Form of license.**—Authorizes the marriage of the persons named (3614).

f. **Record of license.**—Required (3614).

g. **Life of license.**—No provision.

h. **Other requirements and prohibitions.**—The clerk must ascertain from the person obtaining the license, as near as may be, the full names, ages, places of birth and residences of both parties (3614).

**Penalty.**—For knowingly issuing a license contrary to the law the clerk is subject to imprisonment for not more than one year, or a fine of not over \$500, or both (5307).

#### 4. SOLEMNIZATION

a. **The celebrant.**—A minister of the gospel who has produced proof of his religious authority before the circuit or county court and given the required bond (3604). Marriages may be celebrated between persons belonging to any religious society which has no licensed minister in the manner prescribed by such society (3605). **Penalty.**—For solemnizing marriage when not authorized to do so, imprisonment for not more than one year, or a fine of not more than \$500, or both (5308).

b. **Presentation of license.**—Any person who performs a ceremony of marriage "without lawful license" is subject to imprisonment for not more than one year, or a fine of not more than \$500, or both (5308).

c. **Form of ceremony.**—The license authorizes the celebrant to solemnize according to the rites and ceremony of his religious denomination and the laws of West Virginia (3614).

d. **Other requirements and prohibitions.**—Any person who knowingly solemnizes the marriage of a white person and a negro is subject to a fine of not over \$200 (5312).

#### 5. THE MARRIAGE RECORD

a. **Certificates and their distribution.**—The celebrant shall return the license to the issuer within 60 days, with his endorsement of the fact of marriage (3614). **Penalties.**—For failure to do so the condition of his bond is deemed broken. He is also subject to a penalty (3617).<sup>1</sup> For making a false certificate a forfeit of from \$100 to \$500 (3633).

<sup>1</sup> Just what the penalty is is not clear in the codification of laws consulted.



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Residents of the state marrying elsewhere may return a certificate, verified by the affidavit of any person present, to the clerk of the county court of the county in which the husband resides; if he is non-resident, the county in which the wife resides (3616).

b. Local record.—The clerk shall file and preserve, and within 20 days record the license and certificate (3615). The assessor of the county shall make inquiry of all persons assessed by him and report any not shown in the marriage indices, to be furnished him, to the clerk who shall enter them accordingly (3624). Penalties.—For failure to file and record the certificate, the clerk shall forfeit \$10 (3632); or failure to furnish a copy of the indices to the county assessor, \$50 (3632), or knowingly making a false entry, from \$100 to \$500 (3633). For failure by the assessor to perform the duties required of him, he shall forfeit \$10 (3630). Any person requested by the assessor to give such information, who refuses to do so, shall be fined \$10 (3624).

c. State record.—The clerk shall annually transmit to the registrar of vital statistics a copy of the register of marriages and so much of his record taken at the time of issuing the license as is not contained in the register, distinguishing the licenses on which certificates have not been returned and the licenses containing such certificates (3625). Penalty.—For failure to do so, a forfeit of from \$10 to \$100 (3625).

d. Penalties not shown above.—If any person upon whose information any record may lawfully be made in the chapter on marriage, shall knowingly give any false information to be used for the purpose of making such record he shall forfeit from \$50 to \$300 for each offense (3634).

### 6. INTER-STATE RELATIONS

If any resident of the state in order to evade the law relating to incestuous, miscegenetic and bigamous marriages, or the marriage of an insane or physically incapable person or person under the age of consent, shall marry elsewhere, continuing to reside in the state, the marriage shall be governed by the same law as if it had been solemnized in the state (3638; 3636).

### 7. CERTAIN OTHER PROHIBITIONS

A marriage between a white person and a negro, or of an insane person, is void from the time its nullity is declared by decree of the court (3636).

## WISCONSIN

Authorities.—Statutes of 1917 (references are to its sections); Special Session 1918.

### 1. COMMON LAW MARRIAGES

Such marriages are not recognized. "Marriage may be validly contracted in this state only after a license has been issued therefor, in the manner following." Here follow regulations as to form of solemnization (2339n-1).

All marriages contracted in violation of these provisions are declared void except in case of certain designated irregularities (2339n-21-23). Such void marriages may be validated by compliance with the law (2339n-1). Where a marriage has been celebrated as provided and the parties have immediately assumed the habit and repute of husband and wife and continue the same uninterruptedly for one year, or until the death of either, it shall be deemed that a license has been issued (2339n-23).

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### 2. MARRIAGEABLE AGE

Males, 18; females, 15 (2329). Such marriages are voidable on suit by the non-aged party unless confirmed after arriving at the prescribed age (2351).

### 3. THE MARRIAGE LICENSE

a. Requirement.—See 1 above (2339n-1).

b. Where obtained.—From the county clerk of the county in which one of the parties resides; if both are non-residents, in the county where the marriage is to take place (2339n-2).

Neither party is required to appear before the issuer. The parties may make the required affidavits before an officer authorized to administer oaths, who shall have them identified, and forward the statement to the proper clerk (2339n-4).

c. Advance notice, objections, etc.—Application must be made at least five days before the license is issued, though exceptions may be made in the case of dangerous illness or pregnancy or upon request of the female's parents, upon order of the court. The person applying for such order must have been a resident of the state at least 30 days (2339n-3). A notice of the proposed marriage must be posted in the clerk's office (2339n-6).

Any parent, grandparent, brother, sister or guardian of either applicant may file objections with the court; if upon a hearing, the court shall find that the statements in the application are wilfully false or insufficient, or that either party is not competent to marry, it shall issue an order refusing the license. If, however, such falseness or insufficiency is due merely to inadvertence, the court shall permit the parties to amend the application. In case the required information cannot be obtained, the court may order the license to issue notwithstanding such insufficiency. The costs of the proceedings shall rest in the discretion of the court (2339n-6).

d. Parental consent.—Required for males under 21 and females under 18. It must be given before the clerk under oath, or certified under the hand of the parent properly verified by affidavit. If there is no parent or guardian, consent may be given by the judge of the court having jurisdiction in the county where the application is pending (2339n-5). Penalties.—For issuing without the required consent, see general penalty under 3h below. For false testimony by any person as to the age of a minor, or false impersonation of a parent or guardian, a fine of from \$100 to \$500, or imprisonment for not over one year, or both (2339n-7).

e. Form of license.—The license is directed to any person legally authorized to solemnize marriage. It shows the names, ages and condition of the parties—whether single, widowed or divorced—and the parental consent if required. It states that the marriage may be performed within 30 days from the date of the license and that the latter shall not be deemed to dispense with any legal disability. If the marriage is to be solemnized by the parties without a celebrant, the license is directed to the parties and authorizes them to be joined in marriage in accordance with the customs of any religious denomination (2339n-11).

f. Record of license.—Required. The docket is open to public inspection (2339n-9). Penalty.—For failure to comply with these provisions, the issuer is subject to a fine of not over \$50; for preventing any person from making a copy of the entries, a similar penalty (2339n-19).

g. Life of license.—Thirty days (2339n-10). For solemnizing a marriage more than 30 days from the date of license the celebrant, or where there is no celebrant, the parties, are subject to a fine of from \$100 to \$500, or imprisonment for not more than one year, or both (2339n-15-16).

h. Other requirements and prohibitions.—The contracting parties must be identified to the satisfaction of the clerk (2339n-4), who shall require of them, either separately or together, a statement under oath relative to the legality of the contemplated marriage; the date of the same; the names, relationship, if any, age, nationality, color, residence and occupation of the parties; the names of the

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parents or guardians of such as are under the age of legal majority; any prior marriage or marriages and the manner of dissolution thereof; and if there be no legal objection, the clerk may issue the license (2339n-4).

Within 15 days prior to the application all male applicants must be examined for venereal disease by a physician licensed to practise in Wisconsin or in the state in which the applicant resides, and must file with the clerk the physician's certificate showing that the applicant is free from such disease (2339m). Any person who has been afflicted with gonorrhoea or syphilis must file a certificate from a designated state laboratory showing that such person has been examined and is not in a communicable stage of the disease (2339n). There follow directions as to laboratories, physicians' fees, etc. **Penalties.**—Any clerk who wilfully issues a license to any person who has failed to file the required certificate of health, any physician who knowingly makes a false statement in such certificate, or any person who shall disclose any matter relating to the examination except as required by law, is liable to a fine of not over \$100, or imprisonment not over six months (2339m). Any person who obtains a license contrary to the provisions of the venereal disease act, is punishable by a fine of not less than \$100, or imprisonment for not less than three months, or both (2339n).

It is further provided that any person who in any affidavit or statement necessary to the obtaining of a license wilfully and falsely swears, or procures another to swear false in regard to any matter of fact relating to the competency of either or both parties, is liable to a fine of from \$100 to \$500, or imprisonment for not more than one year, or both (2339n-7).

1. **Penalties not shown above.**—For knowingly issuing a marriage license contrary to or in violation of the provisions covering the whole matter of marriage licenses, a fine of from \$100 to \$500, or imprisonment for not more than one year, or both (2339n-8).

### 4. SOLEMNIZATION

a. **The celebrant.**—A justice of the peace, police justice, municipal judge, or court commissioner in the county in which he is elected or appointed; and throughout the state by any judge of any court of record; an ordained minister in regular communion with any religious society and who continues to be such minister or priest; any licentiate of a denominational body or an appointee of any bishop while serving as the regular minister or priest of any church or denomination to which he belongs, provided he is not restrained from solemnizing marriage by the discipline of his denomination. Ministers, priests, licentiates or appointees must file copies of their credentials with the designated official and receive a certificate from him before they are authorized to solemnize marriage (2331-32). Certain religious societies may solemnize marriage according to their customs (2339n-1). **Penalty.**—For attempting to solemnize marriage when not authorized to do so, \$100 to \$1,000, or imprisonment not more than one year, or both (2339n-17). Any person who aids in a fictitious marriage is subject to the same penalty.

b. **Presentation of license.**—For solemnizing without requiring a license the celebrant is subject to a fine of from \$100 to \$500, or imprisonment for not over one year, or both (2339n-15).

c. **Form of ceremony.**—The parties must declare in the presence of two competent witnesses other than the celebrant that they take each other as husband and wife. The rule as to witnesses and declaration also holds for marriages in certain religious societies with special customs (2339n-1). **Penalty.**—For solemnizing contrary to these provisions, the celebrant is punishable by a fine of from \$100 to \$500, or imprisonment for not more than one year, or both (2339n-16).

d. **Other requirements and prohibitions.**—The celebrant must satisfy himself that the parties presenting themselves to be married by him are the parties named in the license, and if he knows of any legal impediment to the marriage, he must refuse to perform the ceremony (2339n-10). **Penalties.**—For solemnizing,

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knowing of any legal impediment, or unless parental consent when required is stated in the license, or in the case of non-residents in a county in which the license has not been issued, the celebrant is liable to a fine of from \$100 to \$500, or imprisonment for not more than one year, or both. In case of marriages solemnized without the presence of a celebrant, the contracting parties are subject to a similar punishment for solemnizing their marriage in a county other than as prescribed (2339n-15-16).

Any person who aids in any way in the solemnization of a fictitious marriage is punishable by a fine of from \$100 to \$1,000, or imprisonment for not over one year, or both (2339n-17).

Any celebrant who solemnizes the marriage of an insane, imbecile, feeble-minded or epileptic person; or any one who assists in procuring such a marriage, is punishable by a fine of from \$50 to \$150, or imprisonment for not over six months, or both (4593m-n).

### 5. THE MARRIAGE RECORD

a. **Certificates and their distribution.**—A certificate must be filed by the celebrant (or where there is no celebrant, by the contracting parties) with the local registrar of vital statistics of the city or town in which the marriage took place, within three days after solemnization. The license itself is retained by the celebrant, as evidence of authority to perform the ceremony (2339n-14). **Penalty.**—For failure to do so, a fine of not over \$200 (2339n-18); for falsely certifying the date of marriage, a fine of from \$100 to \$500, or imprisonment not over one year, or both (2339n-15). The certificate, when issued with the license, contains the data required to be ascertained by the issuer.

When persons living in the state go out of it to be married they must obtain from the clerk of the county in which either of them resided prior to their marriage a blank certificate which they shall cause to be properly filled out and filed, with the local registrar of vital statistics of the city or town in which they reside, within 10 days after their return (1022-52).

b. **Local record.**—The local registrar, or the health officer in cities and the clerk of each township and incorporated village, shall keep an accurate copy of each marriage certificate received by him upon a form identical with the original certificate, to be filed and permanently preserved in his office (1022-25). He shall each month transmit a copy of each certificate received by him to the registrar of deeds of his county (1022-60) who shall file and preserve it (1022-61). **Penalty.**—Any person who fails to file the required certificate with the registrar of deeds or who makes a false certificate, and any registrar of deeds who fails to record it or who wilfully makes a false record, is subject to imprisonment not over six months, or a fine of not over \$100 (4556).

c. **State record.**—The local registrar shall transmit monthly to the state registrar all original certificates received by him, or the duplicates in cities of the first class (1022-26). The state registrar may call for the records of the issuer in order to check up the returns (1022-51) and if any such are incomplete he shall require such further information as may be necessary (1022-8). He shall certify any corrections to the registrar of deeds (1022-57).

### 6. INTER-STATE RELATIONS

If a person who intends to remain a resident of Wisconsin and who is forbidden by its laws to marry, contracts marriage elsewhere, the marriage is void in Wisconsin. If a person who intends to remain a resident of some other jurisdiction and who is forbidden to marry by its laws, contracts marriage in Wisconsin, the marriage is void (2330-m).

## LAWS BY STATES

### WYOMING

**Authorities.**—Compiled Statutes of 1910 (references are to its sections); Laws through 1917.

#### 1. COMMON LAW MARRIAGES

The status of such marriages is not clear. It has been held, however, that a ceremonial marriage without a license is valid (*Connors v. Connors*, 5 Wyo. 433), and that conduct, etc., as man and wife creates a presumption of marriage (*Wiedenhof v. Primm*, 16 Wyo. 340).

#### 2. MARRIAGEABLE AGE

Males, 18; females, 16 (3892). A marriage under this age may be annulled on action of the parent or guardian or the non-aged party, provided it has not been ratified after reaching such age (2918-20).

#### 3. THE MARRIAGE LICENSE

a. **Requirement.**—Previous to the solemnization of any marriage in the state a license for the purpose must be obtained (3894).

b. **Where obtained.**—From the county clerk of the county in which the marriage is solemnized (3894).

c. **Advance notice, objections, etc.**—No provision.

d. **Parental consent.**—Required for all under 21. It must be given personally or in writing, proved by the testimony of at least one competent witness (3895).

e. **Form of license.**—No provision.

f. **Record of license.**—Required (3896).

g. **Life of license.**—No provision.

h. **Other requirements and prohibitions.**—Upon the testimony of some competent witness and of the applicant the issuer shall ascertain the full names and residences of the parties; that they are of sufficient age to be capable in law of contracting marriage; and that there is no legal impediment according to the laws of the state of their residence (3896), and shall refuse to grant the license if any impediments appear (3897).

#### 4. SOLEMNIZATION

a. **The celebrant.**—A judge; a court commissioner of any district court; or a justice of the peace; an ordained or licensed minister of the gospel (3898); religious societies according to their customs (3905). **Penalty.**—For undertaking to solemnize marriage when not legally authorized to do so a fine of not over \$500, or imprisonment for not over one year (3903).

b. **Presentation of license.**—No provision.

c. **Form of ceremony.**—The parties shall solemnly declare in the presence of the celebrant and at least two witnesses that they take each other as husband and wife (3899). Religious societies may solemnize the marriage of such persons as are members of the society according to their customs (3905).

d. **Other requirements and prohibitions.**—Marriages that are declared void by the divorce law—i. e., bigamous and incestuous marriages and the marriage of an insane person or idiot—shall in no case be solemnized (3893). For solemnizing a marriage knowing of any legal impediment the celebrant is subject to a fine of not over \$500, or imprisonment for not over one year (3903).

#### 5. THE MARRIAGE RECORD

a. **Certificates and their distribution.**—The celebrant shall file a certificate with the issuer of the license within three months (3901). **Penalty.**—For failure

## **AMERICAN MARRIAGE LAWS**

to do so or for wilfully making a false certificate a fine of not over \$500, or imprisonment for not more than one year (3903).

b. **Local record.**—The county clerk who issued the license shall record the certificate within one month (3902). **Penalty.**—For failure to record it a fine of not over \$500, or imprisonment for not over one year (3903).

c. **State record.**—No provision.

## **6. INTER-STATE RELATIONS**

Marriages valid where contracted are valid in Wyoming (3907).

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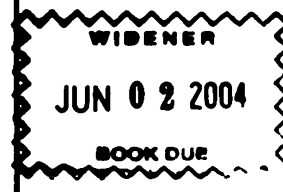
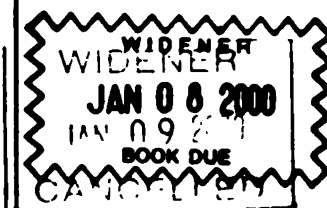


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